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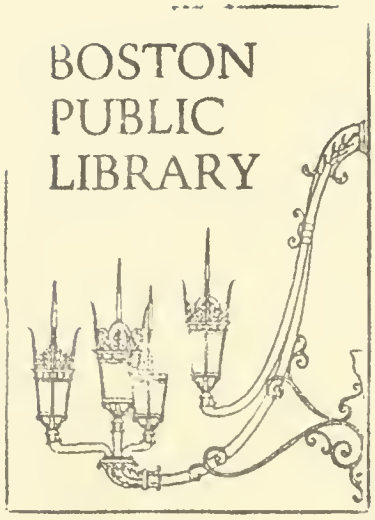
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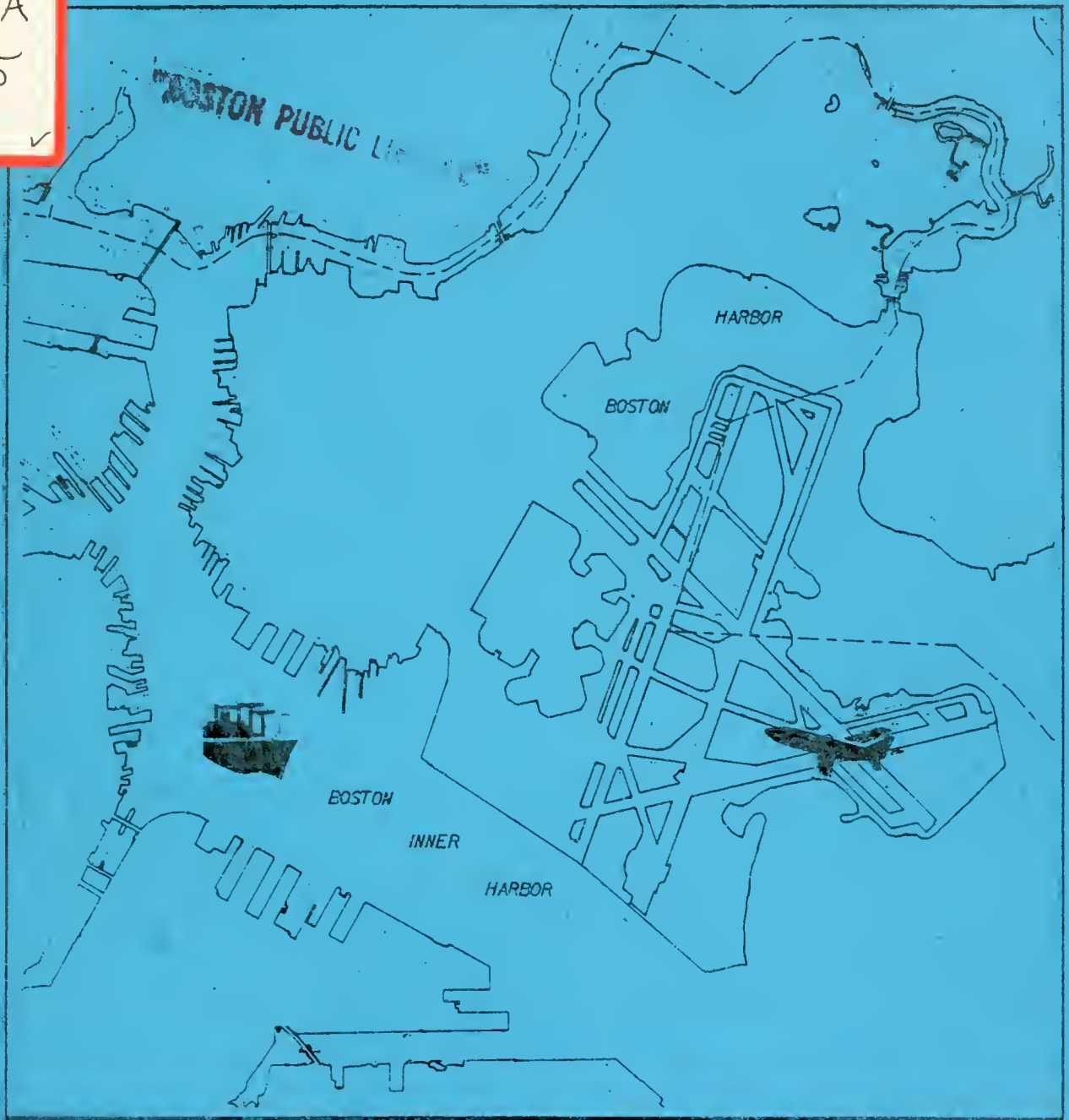

BRIEFING BOOK

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CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

June 27, 1986

The Honorable Michael S. Dukakis
Governor
Commonwealth of Massachusetts
State House
Boston, MA 02133

Dear Governor Dukakis:

Our shared interest in preserving and enhancing Boston's port resources has prompted unprecedented cooperation on new initiatives at both the municipal and state levels over the past two years. I am writing to extend that spirit of cooperation to a number of outstanding issues regarding Boston's future as the Commonwealth's and the region's leading air and sea port. I propose that we meet with the Boards of the Boston Redevelopment Authority and the Massachusetts Port Authority, and appropriate executive staff, to discuss these matters in the early part of next month.

Four major issues in particular call for immediate and coordinated action by state and city agencies:

1. The Future of the Harbor as a Working Port

As New England's major seaport and a center for national and international shipping and commerce, the Port of Boston provides employment for approximately 4,000 people in 170 firms engaged in port-related activities. Revenues generated by the port exceeded $155 million annually; forty-three percent (43%) of all general cargo, and forty-eight percent (48%) of all bulk cargo handled by the port comes from New England. Twenty-four steamship lines connect Boston to 175 ports around the world.

The character of the port as a working waterfront is rapidly changing. In 1959, 2,500 fulltime longshoremen were employed around the harbor; today there are fewer than 300. Changing markets and technology account for most of this change. While New England-related cargo is expected to increase 5.5% a year through 2000, Boston's market share is threatened by competing North Atlantic ports, many of which have recently undertaken substantial public investment to increase capacity. Massport's plans to continue development of Boston's port facilities, and

the city's proposed Marine Economy Reserve floating zone, a part of the Harborpark zoning initiative, should be examined for their combined impact on Boston's future as a world class seaport. I am sure that you share my commitment to improving the harbor as a port and to enhancing the economic strength of our harbor neighborhoods.

2. The Impact of Development and the The Third Harbor Tunnel on East Boston and the South Boston/Fort Point Channel Areas

The Third Harbor Tunnel, which as planned will emerge in the center of the airport, is critical to relieving the heavy traffic flow through East Boston and the tunnels. In South Boston, however, residents are concerned that the Third Harbor Tunnel project will exacerbate the already high level of commercial vehicle traffic through local streets. To address these concerns we should discuss the construction schedule for the New Northern Avenue Bridge, Seaport Access Road, and South Boston (Hampton Street) Bypass, in addition to new local and connector roads which are necessary to mitigate anticipated traffic problems.

Moreover, the prospect of enhanced Fort Point Channel access, and the availability of developable land owned by private interests, Massport, and Boston's Economic Development and Industrial Corporation, are certain to stimulate development activity in the area. The expected magnitude of new development and the planned expansion of the World Trade Center will have a dramatic impact on the South Boston community. Through coordinated effort, we can plan for transportation and other capital improvements, and can address the mix of uses, location, and density appropriate for development in this area.

3. The Expansion of Logan Airport

As the world's eleventh busiest airport, Logan Airport passenger service has nearly doubled in the past ten years, from 10.5 million to 19.4 million, and Massport expects usage to double again in the next twenty years. The many benefits that Logan brings to the region are unfortunately accompanied by negative environmental and economic impacts to the East Boston community. Because Logan is one of the few regional airports in the country with an urban location, heavy traffic congestion, severe public parking shortages, and high levels of noise and air pollution will worsen as Logan's usage increases.

Expanded facilities are necessary to meet regional air service demand, yet our shared commitment to the East Boston community requires a comprehensive discussion of the airport's future impact on East Boston. Effective long-term solutions such as a second regional airport should be discussed.

4. Water Transportation

The geography of the harbor and the new emphasis on the waterfront present ripe opportunities for the development of a water transportation network. Commuter boat service already attracts 1,500 daily passengers from the South Shore. Water shuttle service around the harbor is a promising way to relieve traffic congestion, and to provide links between the downtown, Logan Airport, and harbor communities.

The level of public and private investment in water transit -- at Rowes Wharf, Long Wharf, Logan, Charlestown Navy Yard, and other waterfront sites -- is encouraging. Several key issues, however, remain open including the siting of docking facilities, the setting of standards to ensure the compatability of docking facilities, the scheduling of regular and reliable water transit service, and the regulation of water transit operators. Significant progress toward operationalizing water transportation in the harbor could be achieved if these questions were jointly addressed by the state and the city.

Continued communication between the city and state will, I feel, bring us a long way toward realizing our common vision to expand the port-related economy while enhancing our valued neighborhoods. A vital seaport and a balanced regional air transit system can be achieved only through our joint efforts. I suggest that a preliminary scoping session be held between the Boston Redevelopment Authority Board and the Massachusetts Port Authority Board before we sit down to meet.

I look forward to meeting with you on these and any other issues you wish to add.

Sincerely,

Raymond L. Flynn

Raymond L. Flynn
Mayor

The Port of Boston

Port Activity, Facilities, and Markets

The Port of Boston is New England's major seaport as well as a center of national and international shipping and commerce. A natural deep-water harbor, with 40 foot deep channels, the Port of Boston can accommodate the most modern shipping vessels in the world. Eighteen million tons of cargo worth nearly $7 billion are handled annually in the Port's three public and twenty-three private terminals. The commercial port of Boston is served by 24 steamship lines providing regularly scheduled service to 175 worldwide ports. It is also served by 42 custom house brokers, 200 trucking lines, 26 towing companies, and 2 railroads. In 1983 the Port of Boston ranked 23rd, nationally, in total port trade and 18th, nationally, in container tonnage. In addition, the Port's 170 firms directly employed about 4,000 people and had revenues of over $155 million.

Private facilities in the Port included a variety of terminals, piers, berths and shipyards in Boston, Chelsea, Everett, Revere, Winthrop, and Quincy. Ninety-five percent of total cargo is handled by private facilities in the Boston port primarily consisting of bulk products such as petroleum, natural gas, scrap metal, sugar, and gypsum. Public Facilities of MASSPORT include Moran Terminal, Conley Terminal, and the MASSPORT Marine Terminal. These facilities mainly handle high-value general cargo such as automobiles, lumber, electronic machinery, scientific instruments, paper products, and other consumer goods. Countries in Europe and the Far East are New England's major trading partners, which are distributed accordingly: Europe 58%, Japan and the Far East 23%, Latin America 6%, Australia 5%, and all other areas 9%.

Boston's Port is traditionally used by carriers to serve the New England market. New England accounts for about 43 percent of all general cargo shipments, 13% of neo-bulk (automobiles, lumber) shipments, and 48% of bulk cargo (scrap metal, food products). Imports vastly outweigh exports with petroleum, automobiles, and food products the largest imports and scrap metal, electrical machinery and instruments the largest exports. Because the Port of Boston is one of only five major ports on the North Atlantic coast of the United States with terminal facilities for handling containerized ocean cargo, the increased use of containerization by carriers and development of containerization facilities by MASSPORT has recently stimulated Port activity.

History

The Port of Boston has experienced both good and bad times over the course of a 350 year legacy. Boston's dominance as a world port existed until 1750. From 1750 until 1850 Boston lost ground to New York, Baltimore, and Philadelphia but prospered on the China trade and other specialized activities. From 1850 until 1950, the Port declined as manufactured exports in New England fell precipitiously and other North Atlantic ports began to dominate imports to the New England Market. Only temporary wartime shipping in the early 1900's saved the Port from drastic decline. After World War II, the creation of MASSPORT and the impact of containerization served to stimulate shipping activity. Over the last ten years, the Port has experienced growth of commerce primarily due to modernization of facilities and the still present natural advantages of the Harbor.

From 1630 until the mid 1700s Boston's port was the busiest and most prosperous Port in North America. Fishing, shipbuilding, raw materials and seaborn commerce were the building blocks of Colonial port trade.

The Port of Boston lost its first place status as America's busiest port in 1750. Baltimore, Philadelphia and New York City presented tough competition in the Northeast and their access to the country's agricultural heartland provided an endless supply of exports prompting their rapid development as large ports. This is not to imply that the Port of Boston was not prosperous; trade with Europe, the Eastern Mediterranean and China kept venturesome merchants and traders wealthy until the 1840s.

By the mid-1800s Massachusetts had established a strong manufacturing economy, reliant in great part on the Port of Boston to supply fuel and raw materials to manufacturing industries. Over the next fifty years, Port activity became almost totally reliant upon imports, supplying food for the region's growing population and fuel and raw materials for the growing industries. The majority of locally manufactured goods were absorbed by the domestic market rather than made available for export. At no time during the 1850's did Port of Boston's total exports amount to even one half of its imports.[1] Further exacerbating the shipping imbalance was the fact that Boston exports were of high value but low bulk (ex. textiles), therefore not able to readily fill holds with worthwhile tonnage.

New York, at this time was emerging as a great international port because it was able to corner the distribution of imports and exports for national market area. A shipping pattern had emerged by 1920 in which Boston, because of its demands for imports, became the first port of call for ships to unload their cargo. Without sufficient exports available in Boston, however, ships proceeded to other Ports to unload their remaining cargo and take on exports.

By 1929, Boston's tonnage had increased to over 19 million but deep problems were evident. Growth was due only to the import of raw materials

while exports were virtually non-existant. At the same time, competition from other cities had eroded Boston's own market - New England. About 65% (by value) of all New England's manufactured goods intended for export moved through New York, while only 14% moved through Boston.[2] By 1940, Boston was only the fifth largest Port north of Virginia. Wartime activity in the 1940s temporarily boosted port activity.

After World War II, the tenuous status of the Harbor was obvious. MASSPORT, created in 1956, has served to revive the Port through management and development over the last thirty years. Both MASSPORT's improvement of shipping facilities and the advent of containerization have stimulated growth of the Port since 1970.

The shipping industry has been changing, in past decades, from the use of small crates to huge containers which are hoisted off the ship by a crane and placed directly on truck trailers for delivery. Container shipping began in South Boston with the Sea L Company and in 1971, Massport opened the Moran Terminal in Charlestown and further enhanced container shipping in the Port of Boston. The 25 million dollar, 45 acre terminal has 1100 feet of berth space. The 70 ton Hitachi crane and the 45 ton capacity Paceco crane can move up to sixty containers an hour. Despite land transportation problems, labor disputes and changes in shipping tonnage a major resurgence in the volume of trade through Massport's facilities has occurred. According to Massport, containerized tonnage coming in and out of the harbor rose by roughly 90,000 tons in 1983 as compared with 1982. (See table 1) Each ton has an average value of $3000, the highest in the nation and double the national average. In addition, the new 19 million dollar Conley Terminal in South Boston has increased both volume and productivity in the Port. The harbor is in an upswing, employment is high along with productivity and the ILA is working more hours than in recent years.

Future Growth of the Port of Boston

According to MASSPORT projections, the Port of Boston is expected to grow at a moderate pace, continuing trends from the mid-1970s. New England's general cargo was forecast to grow by 5.5 percent annually from 1980 through 2000. At its present market share, Boston tonnage of general cargo would exceed two million tons by the year 2000 from 800,000 tons in 1980. By 1984, tonnage had exceeded 1 million. MASSPORT is currently continuing improvements and additions to facilitate this growth. Other economic factors must also be considered, including:

- Competition from other U.S. and Canadian ports.
- Regulatory trends in trucking and ocean shipping.
- Labor costs, productivity, and regulations.

By the year 2000, MASSPORT is planning to increase container storage acres, berths, and container capacity to accommodate expected growth.

Boston's harbor can accommodate traditional port uses, commercial development, housing, and open space together in future years. The Port of Boston is proceeding on a moderate growth path over the next twenty years with future expansion of maritime related facilities. The 50% expansion of container related storage and non-storage facilities is able to be accommodated in present and adjacent shipping terminal areas. Commercial, residential, and public open space harbor uses can coexist with the planned expansion of Port activities.

1. P.9 Louis E. Cellineri, Seaport Dynamics, 1976.
2. P.26 ibid.

All other data are from various MASSPORT reports and publications.

TABLE I

GENERAL CARGO

General (non-bulk) cargo is shipped through the public terminals of the Port of Boston, owned and operated by the Massachusetts Port Authority. Eighty-four percent of Boston's general cargo is shipped in containers (standardized 20 or 40 foot metal boxes) on scheduled liners. In 1983, 870,750 tons of general cargo valued at $2.6 billion were handled in the port.

General cargo shipped through Boston reflects the composition of New England industry and the consumption patterns of the region's residents. Major commodities shipped in 1983 included:

IMPORTS	EXPORTS
automobiles*	audio equipment
beer and wine	data processing equipment
fish	electrical equipment
footwear	leather
furniture	machinery parts
industrial machinery	paper products
lamb and beef	photographic equipment
lumber*	scientific instruments
newsprint*	textile waste
sheepskin and wool	thermoplastic resin
sporting equipment	worked hardwood

*non-containerized (neo-bulk) cargoes

GENERAL CARGO IN THE PORT OF BOSTON

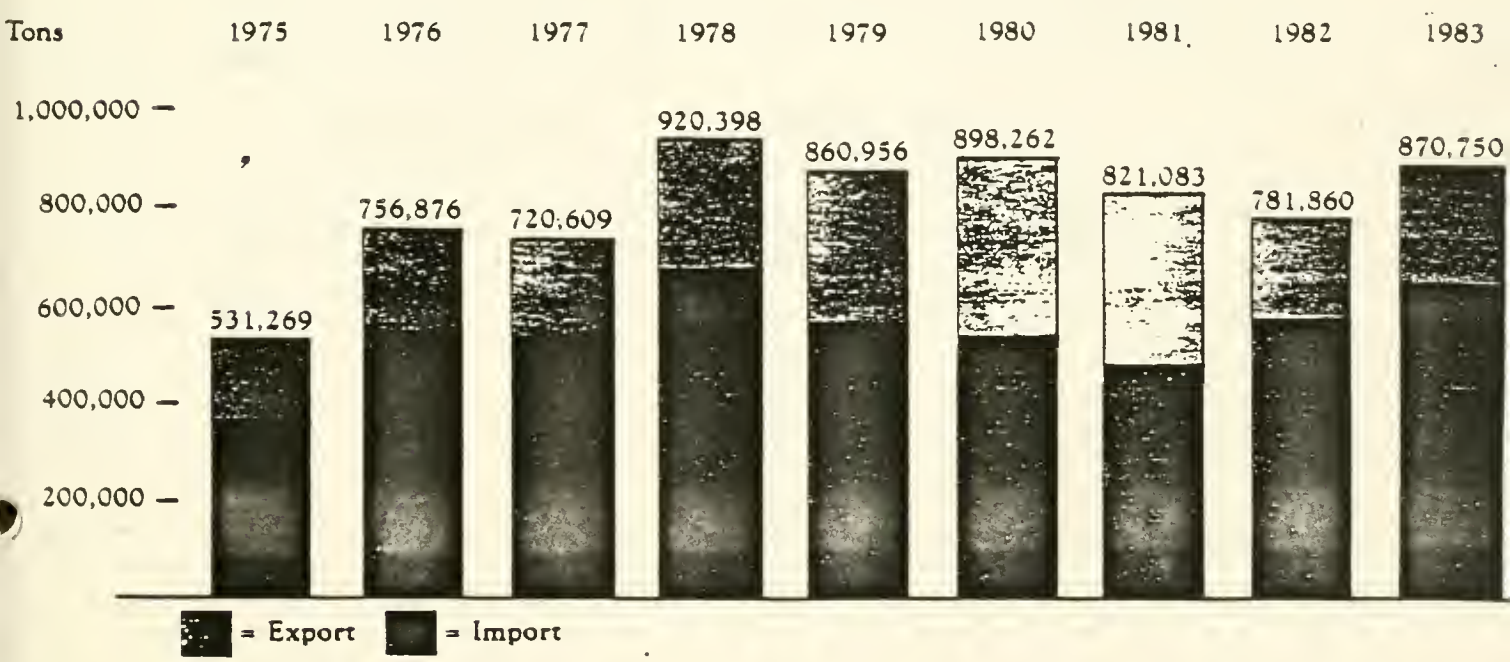
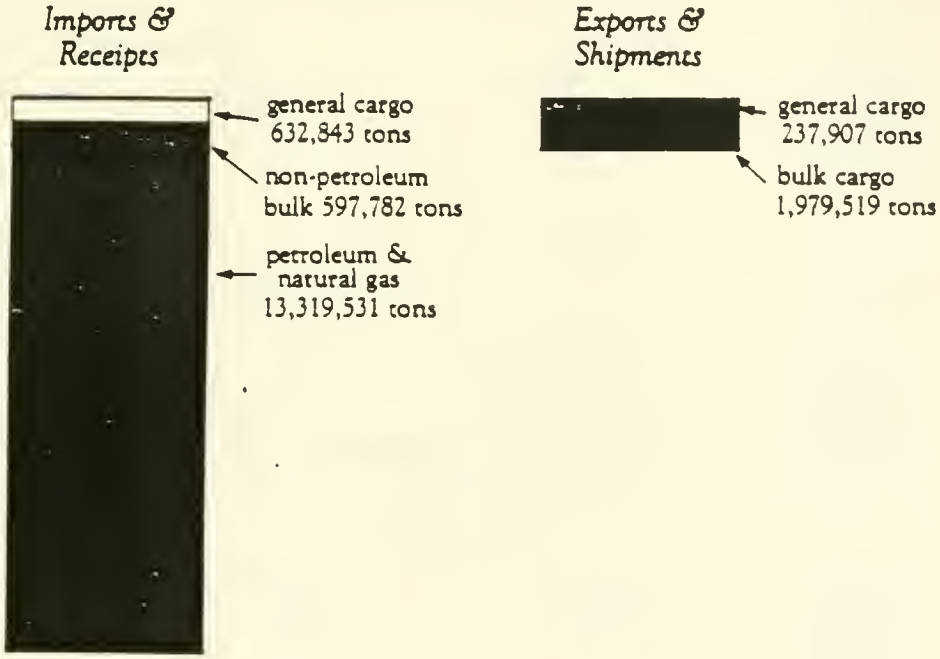


TABLE II

TOTAL PORT TRADE

In 1983 the Port of Boston handled 16,767,585 tons of cargo.


Imports & Receipts
general cargo 632,843 tons
non-petroleum bulk 597,782 tons
petroleum & natural gas 13,319,531 tons
Exports & Shipments
general cargo 237,907 tons
bulk cargo 1,979,519 tons

BULK CARGO

Bulk cargo is liquid or dry cargo piped from ships carrying that cargo exclusively. In 1983, 15,896,835 million tons of bulk cargo worth more than $1.4 billion were handled at the Port of Boston's 23 private terminals. The major commodities were:

IMPORTS/RECEIPTS (short tons)		EXPORTS/SHIPMENTS (short tons)	
petroleum & fuel oils	12,463,960	petroleum	1,464,547
natural gas	855,571	scrap metal	514,972
sugar	281,399		
gypsum	173,322		
salt	133,461		
molasses	9,600		

TABLE III

1983 GENERAL CARGO IN THE PORT OF BOSTON

	MORAN TERMINAL	SOUTH BOSTON TERMINALS	TOTAL
By Ton:			
Containers In:	353,614	143,464	497,078
Out:	175,119	61,479	236,598
Total:	**528,733**	**204,943**	**733,676**
Autos (In)	—	82,798	82,798
Lumber (In)	—	14,749	14,749
Newsprint (In)	14,156	—	14,156
Other Breakbulk In:	—	24,062	24,062
Out:	—	1,309	1,309
Tonnage In:	367,770	265,073	632,843
Tonnage Out:	175,119	62,788	237,907
Total Tonnage:	**542,889**	**327,861**	**870,750**
By Unit:			
Containers: Boxes	43,935	16,770	60,705
or TEU's	77,861	27,609	105,470
Automobiles	—	74,462	74,462
Lumber (000's of gross board feet)	—	16,856	16,856

VESSEL ARRIVALS—PORT OF BOSTON 1983

Full Container Ships	192*
Tankers	315*
Dry Bulk	89
Breakbulk/Auto/Lumber	94
Passenger Vessels	11
Other	10
	711

*includes only self-propelled vessels

1984 UPDATE OF GENERAL CARGO DATA (Table 1)

GENERAL CARGO ACTIVITY IN THE PORT OF BOSTON 1975 - 1984

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	CHANGE 83 VS 84
CONTAINER TONNAGE:											
IN	251152	379468	369887	511131	448813	438744	442125	427230	497078	621422	25.0%
OUT	149720	213936	191930	237060	287195	366480	250982	225701	236598	219736	-7.1%
TOTAL	400872	593404	561817	748191	736008	805224	693107	652931	733676	841158	14.6%
BREAKBULK TONNAGE:											
IN	72847	68737	74882	70003	41779	19647	23607	28058	38218	83084	117.4%
	6149	4440	2718	492	1952	0	161	460	1309	50	-96.2%
	78996	73177	77600	70495	43731	19647	23768	28518	39527	83134	110.3%
AUTO TONNAGE IN:	33274	44694	44985	57572	46008	57993	72535	78548	82798	86762	4.8%
LUMBER TONNAGE IN:	17907	46679	37929	46295	35209	15398	31673	22353	14749	11218	-23.9%
TOTAL GENERAL CARGO TONNAGE	531049	757954	722331	922553	860956	898262	821083	782350	870750	1022272	17.4%
TEU'S IN	28648	42675	40458	57481	51355	51754	48708	48775	61110	64385	5.4%
OUT	17229	24969	22923	28623	33424	38916	26630	38644	44360	62691	41.3%
TOTAL	45877	67644	63381	86104	84779	90670	75338	87419	105470	127076	20.5%
# OF AUTOS	33274	41414	42244	53857	42418	52759	63748	71410	74462	78877	5.9%
GBF OF LUMBER	20465	53347	43348	52908	40240	15349	36197	22549	16856	12821	-23.9%

EXHIBIT 1

Trade Center draws praise as big boon to the 'Hub'

The World Trade Center Boston celebrated its official opening Monday with a reception and ribbon-cutting ceremony attended by federal and state officials on historic Commonwealth Pier.

U.S. Commerce Secretary Malcolm Baldrige and Governor Michael S. Dukakis led a contingent of dignitaries who welcomed the new World Trade Center as an important addition to the region's economy and a focal point for foreign trade.

"The official opening of the World Trade Center demonstrates the commitment of Boston and New England to international trade," said John Drew, president of WTCB. "Our mission is well-defined: to work with business, industry and existing organizations in the development of foreign trade markets, and to help ensure that Boston and the region are at the leading edge of international commerce."

Drew said the WTCB is also designed and fully equipped to help local, regional and national businesses and organizations showcase their products and services and hold their meetings, conventions and special events.

"We're here to help," Drew said, "and today's official opening signals that we're gearing up to full speed."

The ceremony included ribbon cutting at the entrance to the Boulevard that passes through one level of the three-level facility. Prior to this, Dukakis and Baldrige addressed an audience of New England business professionals that included regional leaders in WTCB's 418 amphitheater.

The opening ceremony was a climax to activity that has been building at the WTCB harborfront site over the past few years. It began with the $90 million renovation and conversion of massive Commonwealth Pier into the home and headquarters of WTCB. Built in 1912, Commonwealth Pier is now listed in the *National Register of Landmarks*.

In April of 1985, the World Trade Centers Association, established in 1966, accepted the World Trade Center Boston as a member. Today WTCB is one of 47 World Trade Centers in 25 countries, with more than 40 other centers under construction or in the planning stages.

The World Trade Center Boston encompasses four major areas:

- An Exhibition Center of 120,000 square feet for quality trade shows and exhibitions;
- A market center of 200,000 square feet for high-tech display space;
- A Conference Center that includes 24 rooms and an auditorium featuring state-of-the-art equipment highlighted by two-way video teleconferencing.
- World Trade office space of 400,000 square feet.
- World Trade Club, which opened in October to provide members with an elaborate social setting in which to conduct business.

As one of the newest members of the World Trade Association, the WTCB has jumped off to an auspicious start. By the beginning of 1986, the WTCB had already booked its entire exhibition space for the next three years to 25 top-ranked trade exhibitions.

"The response the WTCB is receiving from both the public and private sectors shows that people are well aware of how much business the World Trade Center can help generate in the Boston area and the region," Drew said. "The concept of the World Trade Center Boston has always been surrounded by optimism. What has been happening over the past many months—and what is happening today—shows that the WTCB concept is also embedded in realism. We're on the way."

Already, the WTCB houses a broad range of public and private organizations involved in international commerce, while showcasing the region's products and services. The WTCB also provides a range of support services, including trade information resources, educational programs, trade mission sponsorship and international trade events.

As New England's focal point for international trade activities, the WTCB brings together participants in all areas of international commerce, while bringing together domestic buyers and sellers of goods.

The construction management and marketing of the World Trade Center Boston is done by the Pier 5 Limited Partnership, comprised of Drew and Peter and William O'Connell, executive officers and co-founders of O'Connell Development, Inc.. Drew is founder and president of the John Drew Company, Inc., a real estate and development firm.

The Boston Globe
SUNDAY, JULY 6, 1986

PROFILE

Making the right moves

Developer John Drew has the Midas touch

By Charles A. Radin
Globe Staff

While the other VIPs were savoring chocolate mousse cake, cognac and the Bill Cosby show that had just ended at Great Woods, John Drew was directing traffic.

Not the construction traffic that he marshaled to complete such tricky mega-projects as Boston's World Trade Center and Bayside Mall, but cars caught in the two-hour, bumper-to-bumper snarls that marred the beginning and end of Great Woods' first sellout.

Rolling up his sleeves and joining the local cops and kids at the exit was but a part of Drew's reaction to the Mansfield entertainment facility's startup problems. Firing the manager of the facility less than two weeks after the opening was another.

Taken together, these moves may give some insight into why John E. Drew, native of South Boston, resident of Marblehead, veteran of the administrations of Massachusetts Gov. Francis Sargent and Boston Mayor Kevin H. White, has become, somewhat suddenly, a hot developer with a Midas touch.

An eye for what's possible

At 42, Drew shows neither the blustery aggressiveness of some of his peers nor the pretensions to sophistication of others. Having recently pulled off major projects on troubled sites with both the trade center and Bayside, he has established a reputation as a developer whose ambition is tempered by a practical grasp of what's possible, a reputation that, to financiers of development, is maybe even better than money in the bank.

Drew will need both political wisdom and good connections if the roll he's currently on is to continue. He acknowledges that no project is more likely than phase two of the trade center to become the focus of a simmering city-state dispute over control of development on Massachusetts Port Authority property.

The state asserts that all activities on Massport land are exempt from city zoning. Boston Redevelopment Authority director Stephen Coyle claims only port-related activities are exempt. Drew and his partners hope to finish trade center phase two – a million and a quarter square feet of office space – on Massport property in South Boston by 1989, a timetable almost guaranteed to put the project at the center of the intergovernmental tug-of-war.

Drew seems as uncomplicated as his trade center office, which contains dark, natural wood furniture, an acrylic painting of the center and not much else. His manner is entirely matter-of-fact when he says that his recent appointment to the board of the South Boston Neighborhood House "was like 'Roots.' " He is able to sit astride his growing empire – which also includes the Merchandise Mart in Boston – and assert, with a straight face and a steady gaze, that "I'm a child of the Sixties . . . I don't think I've changed radically."

Drew's history lends substance to what initially might seem a preposterous suggestion.

After receiving his undergraduate degree in English literature from Stonehill College, he got his master's in community organization at the Boston University School of Social Work. While at BU, he wrote newsletters for the state welfare department, worked for the South End Neighborhood Action Program, spent a summer on distress cases in the Orchard Park housing project and met a professor named David Liederman, who also was a state representative and who would become a key figure in Gov. Michael Dukakis' first administration.

Liederman introduced him to Albert L. Kramer, chief aide to then-Gov. Sargent.

DREW, Page A20

Drew

Continued from Page A17

who put Drew to work on some problems with state welfare programs. That put him in position for what he believes was his most formative early experience – organizing the state's effort to deal with President Nixon's 1973 decision to close most of the military facilities in Massachusetts.

"It is one of the things I'm most proud of, and I think it was one of the better hours of government," Drew says of the way state and local leaders cooperated to handle the closings.

He learned an important political lesson at the time – that "we had to try our best – really try hard – to reverse the decision, even though we knew there was virtually no chance."

When Sargent's term ended, Drew became administrative assistant to US Rep. Michael Harrington, then was asked by Hale Champion, director of the Boston Redevelopment Authority, to become director of federal relations for the city. He was a member of the White administration in 1976-78; a major project was the Boston Plan.

"We did something which, for any city at the time, was radical," Drew recalls. "We said that some things were just not going to be funded and we established priorities .... The whole concept, nationally [of urban development action grants, or UDAGs] came out of it. The whole basis was: Concentrate your resources and make sure you succeed."

The practical application of these experiences in his work today is not hard to see. For instance, in the trade center project, the question arose whether to build in maximum television communications technology or stop one level short of that. Building into the center the capacity to hold multi-city conferences via television was Drew's own idea. Maximum capacity would have cost $500,000 more – a relatively small sum in a $95 million project. But Drew said no.

Drew sees a need for the greater capacity, he says, but he was unable to put together interested parties with sufficient expertise to handle it. "One of the things I've learned is somebody else's business is somebody else's business." The smaller-size teleconferencing operation could be handled without someone else's expertise.

Drew left city government to set up Brandeis University's Center for Public Service. Before he left Brandeis, he began work as a vice president in the development firm of Corcoran, Mullins & Jennison, which had become interested in him through contacts made while Drew was a city official and the firm was pursuing projects in Boston.

He set up his own company in 1983, but even before that, he and Quincy developer Peter O'Connell, who would become one of Drew's closest associates, attempted to put together their first deal – a project for the Bird Island Flats area at Logan International Airport.

They lost, but O'Connell had an option on the Bayside area, and there they succeeded handily, turning a down-and-out shopping center into a highly successful exhibition center. Together with Peter's brother, William O'Connell, they chewed their way through mountains of work on Constitution Plaza in Charlestown, the Merchandise Mart in Dorchester and the trade center. In the midst of all that, Drew set out with another set of partners to develop Great Woods.

Projects mean traffic snarls

That the project was built at all is testimony to the credibility Drew has accumulated. The Great Woods financing was turned down by Bank of New England, but was arranged by US Trust in large part because of that bank's experience with Drew, according to Brian Sopp, senior vice president of UST's real estate division.

"It's axiomatic that the developer and his experience are more important than the project," Sopp said.

The only major criticism that falls anywhere near Drew concerns the traffic generated by his projects. Many an evening already has been ruined by people trying to get in and out of Great Woods, and not a few public officials steam privately about being caught in traffic jams spawned by Bayside Mall shows.

"The Bayside Mall has been negative in terms of traffic, and the World Trade Center is basically the same thing," says Daniel Yotts, executive director of the South Boston Community Development Corp. "They're good for the transient businessmen and the people who come to look at the boat show; no one in this community benefits economically or otherwise."

That view is not shared by everyone in South Boston, despite widespread concern over the impact of traffic from new developments there. John Tynan, president of South Boston Neighborhood House, where Drew played as a kid and where he has just been put on the board, says:

"He's a fine lad ... I'm sure he'll have some contacts that can give us some financial benefits ... I think he's going to be a credit to us and helpful to the community from a social services perspective .... Frankly, we hope [because of his Great Woods involvement] that he can help us in the arts area, too. He said he wanted to do something for his hometown."

What next? Drew's possibilities range from development of the MBTA's Columbia Point subway station to more facilities like Great Woods, which, problems notwithstanding, is showing signs of being a phenomenal success. Financing won't be a problem.

"These guys are talking about doing a performing arts center in Florida," Sopp said. "They're talking to us, and we're interested. John will be doing other things, too, and we certainly hope he will give us a crack at them."

John Drew: as developer of Great Woods, Boston's World Trade Center, the Bayside Mall and other projects, he seems to have the Midas touch.

Globe staff photo/John Blanding

Globe staff photo/Bill Powers

The Great Woods Performing Arts Center in Mansfield, one of John Drew's successful projects.

MEMORANDUM

TO: Raymond L. Flynn, Mayor

FROM: Richard Dimino, Commissioner, Transportation Department

DATE: June 30, 1986

SUBJECT: City of Boston's Support of the Central Artery and Third Harbor Tunnel

The Public Works Committee of the U.S. House of Representatives has reported favorably on H.3192, the federal highway legislation that appropriates $2.56 billion as a line item for funding the Central Artery and Third Harbor Tunnel projects. The City of Boston's position on these projects becomes increasingly important as H.3192 proceeds to the House and Senate for debate. As stated in your December 23, 1985 letter to DPW Commissioner Tierney, the city's support of the Central Artery and Third Harbor Tunnel projects is contingent upon the state agreeing to mitigate neighborhood impacts, job and business loss, disruption to transportation and commerce, and other concerns voiced by the city. To date, we have not received a definitive commitment from the state on these critical issues.

The state's response, in the form of draft comments from Secretary Salvucci, in our judgement fails to address the core of the city's concerns. Subsequent efforts by city officials to bring this matter to closure have been ignored. It is now necessary to take stronger action to obtain from the state sufficient authority and resources to mitigate anticipated adverse impacts on Boston's neighborhoods. We must continue to press for good faith commitments from the state and be willing to take our case to all available forums if commitments are not forthcoming.

The total impact of the Central Artery and Third Harbor Tunnel projects on the city and its neighborhoods would be staggering. The state is asking Boston residents to bear the burden of projects that would benefit primarily those who live outside the city boundaries. The city's concerns are basic: jobs, homes, and neighborhoods. The issue at stake, however, is simply the city's right to control its own destiny. Boston must preserve its control over the choices that affect the quality of life of its residents.

Among the issues that require immediate commitment from the state are:

- Direct Neighborhood Impacts

  During their construction, the projects would produce adverse impacts directly affecting, at a minimum, nineteen neighborhoods and districts in the city. Public access would be inhibited, environmental quality would deteriorate, businesses and residents would be forced to relocate, and severe traffic congestion would be exacerbated in virtually all neighborhoods during the projects' fifteen years of construction; and other problems unique to different areas would undoubtedly arise. The North End, East Boston, South Boston, Downtown, South End, Chinatown, and South Bay would be the neighborhoods hardest hit by the construction impacts of the projects.

- Public Access

  Construction of the projects would impede public access, particularly in the North End and South Boston, where pedestrianways would be blocked and commercial vehicles would be re-routed through residential areas. The state has not acted on a request to provide the city's Transportation Department with a schedule for the development of plans to ensure public access during construction. Relatedly, the re-routing of heavy commercial vehicles onto already overburdened bridges and roadways in the neighborhoods underscores the imprudence of building a twenty-first century highway that is dependent upon nineteenth century infrastructure. The state must actively bear the financial burden for planning and constructing the local roadway and bridge improvements, such as the New Northern Avenue Bridge, Seaport Access Road, and South Boston Bypass, necessary to mitigate access problems caused by the projects during construction and operation.

- Jobs and Displacement

  The projects would displace 4,400 jobs in 131 businesses throughout the city. The North End, South Boston, and East Boston would account for 2,200, 480, and 511 of the displaced jobs respectively. The state has failed to provide adequate displacement measures; and since most of the firms affected are smaller manufacturing businesses, it is unlikely that affordable space would be easily located elsewhere in the city.

  Significant secondary business and residential displacement would also occur. This displacement, the results of environmental impacts and fluctuating property values, would reinforce the projects' destabilizing influence on the city's neighborhoods.

  The state has been asked to comply with the city's Jobs Ordinance for residents, women, and minorities for the 77,000 person years of construction employment that would be generated by the projects. To date, no such assurance has been provided.

- Public and Alternative Transit

  Without significant improvements to public transit, the Central Artery and Third Harbor Tunnel projects would impose transportation burdens on the city that could result in halting economic growth in the region through the end of the century. The state's commitment to the Bowdoin-Charles connector, the Fort Point Channel loop, and South Station-Logan connector is necessary to maintaining the economic vitality of the city and the metropolitan area.

  Additionally, the state's cooperation is needed to stimulate the development of water transit services. Both regional commuter and harbor shuttle services are critical to relieving traffic burdens imposed by the construction of the projects.

- Parking

  The projects are expected to result in the loss of 2,980 parking spaces by the second year of construction. Over the 15 year construction period, this number could average 2,377 parking spaces. The state has the financial capacity and statutory authority to provide parking facilities in areas near the Downtown. These options should be explored.

- Environmental Impacts

  Excessive noise, dust, and vibrations during construction would plague the North End, South End, East Boston, Waterfront, and Chinatown; and hazardous cargo would be transported through some neighborhoods. The magnitude of this nuisance and threat to public health would be expected to generate significant secondary business and residential displacement. Once in operation, NO2 concentrations emitted from ventilation buildings would exceed the acceptable levels. Comprehensive mitigation measures need to be developed and monitored by both the state and the city to deal effectively with the these potential hazards.

- City Financial Burden

  The financial burden imposed by the projects would be incalculable. The items include loss of taxable property, infrastructural costs, increased traffic management costs, and other costs associated with planning, mitigation, and relocation. In addition, the city now receives $189,000 per month from parking leases that would be inoperable as a result of the projects. These receipts, totaling $2,286,000 annually, are projected to increase 10% per year. While the state has indicated that it would reimburse the city for direct expenses incurred as a result of the projects, the extent and timing of this reimbursement must be delineated carefully.

- Development

  The state has given its clearest response regarding control over 20 acres of developable land created by the artery depression and the construction of related roadways. The air rights provides the opportunity to mend the damage done to the city by the construction of the original highway

in the 1950s. The city is adamant about maintaining control over all development rights. Furthermore, where urban land takings occur, ownership must remain with or be conveyed back to the city. The state would, however, retain approval rights where development would have an impact on the functioning of the artery. The state has indicated that it would retain substantial involvement in development decisions affecting all land available after construction.

Assurances that the structural design of the artery will be capable of supporting subsequent air-rights development are also needed from the state.

Anticipated development activity prompted by improved access to the Fort Point Channel Area would require careful planning for potential environmental, and infrastructural impacts. Plans to determine the appropriate uses and densities for development of this area are needed. Similarly, improved access to Logan Airport would foster efforts to expand that facility. The environmental impacts on East Boston and the rest of the city caused by this expansion would be severe, and could require mitigation measures as far reaching as a second regional airport. The scale of these planning efforts requires a substantial commitment of resources by the state.

The city is committed to protecting jobs for residents, promoting a healthy environment, unifying its urban fabric, and maintaining the proper separation of state and city functions. Our position throughout this process has been supportive and reasonable. The time for a good faith response from the state is at hand.

CITY OF BOSTON · MASSACHUSETTS

OFFICE OF THE MAYOR
RAYMOND L. FLYNN

December 23, 1985

Mr. Robert T. Tierney, Commissioner
Massachusetts Department of Public Works
Ten Park Plaza
Boston, Massachusetts 02116

SUBJECT: Third Harbor Tunnel, I-90/Central Artery, I-93
Final Environmental Impact Statement (FEIS)
and Final Section 4(F) Evaluation

Dear Commissioner Tierney:

The City of Boston has reviewed the Final Environmental Impact Statement entitled "Third Harbor Tunnel, I-90/Central Artery, I-93. Based on our review it is obvious that the proposed Tunnel/Artery project is a massive undertaking that will have substantial impacts not only during the approximately fifteen year construction period but for decades thereafter.

It is imperative that the project's transportation and economic benefits should not come at the expense of the City's impacted neighborhoods.

The City of Boston's support of the proposed Third Harbor Tunnel/Central Artery is contingent upon the State's commitment to resolve important neighborhood and City concerns.

A summary of the City of Boston's major concerns are as follows:

1) Neighborhood Impacts - Construction of the proposed project will directly affect nineteen neighborhoods and districts in Boston and have indirect impacts city-wide. Each neighorbood has unique problems which must be understood and addressed with defined and acceptable mitigating measures prior to and during construction.

2) Development - The created development parcels provide the opportunity to mend the extensive damage done to the City's fabric when the original highway was constructed in the 1950's. The 20 plus acres which will be made available provide the opportunity to

develop new housing, commerce and open space for the City. Title to these development parcels, both air right and land, must be transferred from the State to the City. The State must provide the formal mechanisms and funding to the City to undertake the extensive planning, engineering, urban design, financial feasibility and citizen participation work necessary to accomplish this development. The appropriate foundations necessary to support the air rights development must also be provided for by the State at this time. The State must clearly recognize that the City will be solely responsible for the disposition of the development rights.

3) Public and Alternative Transportation - The project will alter Boston's transportation system, it is important that attention be paid to transit improvements prior to, during and after construction. Consideration must be given to three rapid transit projects:

1) a Charles to Bowdoin connection
2) a Red Line connection loop into Fort Point Channel between Broadway and South Station, and
3) a South Station to Airport transit connection via the Fort Point Channel area.

Provision of water transportation during construction should be considered to provide replacement access for people inconvenienced by the construction project.

4) Environmental Issues - Both the physical construction of this project and its operation will create a wide range of environmental problems. Much of this impact will affect adjacent residential neighborhoods and commercial areas of the City, particularly the North End, Waterfront, Chinatown, East Boston and South Boston areas. Adequate controls must be imposed to maintain healthy living conditions for neighborhood residents.

5) Public Access - During the entire construction period, it is imperative that both vehicular and pedestrian access be maintained to and from the several neighborhoods that will be affected by this project. This concern is particularly critical for the North End, North Station, South Station, South Boston and Harborpark areas, whose very existence depend on safe and convenient pedestrian links and an adequate local roadway network. Plans to accomodate parking need to be established for those areas that will be negatively affected.

6) Design and Alignment - The design and alignment of the tunnel/artery facility is to be coordinated with the City's effort

to redevelop major areas of the City, particularly the North Station, Fort Point Channel, South Boston areas. It is important to minimize the disruption of the existing and proposed urban fabric. As an example, the current plan leaves the elevated Storrow Drive connector ramps in place in the North Staton area and adds additional intrusive elements which could seriously impede the City's effort to redevelop this area. In the South End, the ramp design must be modified to facilitate a connection to the proposed Herald Street extension, which also must be made part of this project. In the South Boston area, large open trench construction makes little provision for air rights development. Issues such as these should be resolved with the State and City through a joint design review process.

7) Jobs and Displacment - Although the EIS identifies the problems associated with the interruption of business adjacent to the project site, including the total or partial taking of 31 properties involving 131 businesses and 4,400 workers, it does not adequately address potential secondary business and residential displacement that is likely to occur. Significant issues include the disruption of adjacent neighborhood businesses and living patterns due to the construction-related impacts. Decreased rents and increases in residential vacancy rates can result from a reduced quality of life during the construction period. Similarly, rising rents and displacement can result from enhanced property values after completion. It is important that the State develop specific programs to provide assistance to business owners and residents who may be affected. These programs, such as financial assistance and public information, are of such importance that they should be administered by the City under a federal-state contract. Finally, construction jobs created by this project should comply with the City's Job Ordinance. A fund for a construction job training program should be established.

8) Community Involvement - An active community review process must be established and adequately funded to review the highway plans as they are further defined. The community involvement must be maintained throughout the construction period to provide a mechanism for resolution of any construction-related problems.

9) Funding - The City will experience financial losses and be required to increase various planning, basic and public safety services as a result of this project. A contract mechanism needs to be established between the City and State which will allow for State funding of the City's project related expenditures. In addition, a number of capital and infrastructure programs will need to be either adjusted or implemented. Public facility and roadway improvements associated with the construction and implementation of this project should be funded by the State.

The enclosed comment document further defines the City's concerns.

Sincerely,

Raymond L. Flynn
Mayor

cc: Michael S. Dukakis, Governor
James S. Hoyte, Secretary, Executive Office of Environmental Affairs
Frederick P. Salvucci, Secretary, Executive Office of Transportation and Construction
R.A. Barnhardt, Federal Highway Administration
Elizabeth H. Dole, Secretary, U. S. Department of Transportation

THIRD HARBOR TUNNEL, INTERSTATE 90
CENTRAL ARTERY, INTERSTATE 93

Final Environmental Impact Statement/Report
and Final Section 4(F) Evaluation

Comments By

City of Boston

December 1985

1) INTRODUCTION

The City of Boston has reviewed the Final Environmental Impact Statement/Report (FEIS/R) entitled "Third Harbor Tunnel, I-90/Central Artery, I-93". This comment document describes specific City concerns under the following categories:

- Neighborhood Impacts;
- Development;
- Public and Alternative Transportation;
- Environmental Issues;
- Public Access;
- Design and Alignment;
- Jobs and Development;
- Community Involvement and Funding.

A final section entitled "Agreements" provides a framework for future State-City collaborations and agreements that need to be considered and satisfactorily resolved.

The FEIS/R outlines a number of problems in each of the City's impacted neighborhoods and districts. Mitigating measures outlined in the FEIS/R associated with each of the identified problem areas are inconsistent; some being comprehensive while others are non-existent.

It should be understood that the concerns identified in the comment document are in no way exclusive. Additional analysis of the FEIS/R together with further definition of the project's design will raise a number of additional concerns/problems.

The intent of this comment document is to:

1) bring attention to the City's concerns emphasizing those that are of critical importance as well as add those that are omitted in the FEIS/R, and 2) clearly identify recommended and/or required State actions that will lead to addressing the City's concerns.

Finally, the preparation of the City's comments document was coordinated by the Transportation Department. The comments reflect a collaborative work effort, including the perspectives and review comments of a number of City agencies. Participating agencies/departments are: Boston Redevelopment Authority, Assessing Department, Public Works Department, Economic Development and Industrial Corporation, Office of Environmental Affairs, Water and Sewer Commission, Parks and Recreation Department, Boston Police Department, Boston Fire Department, Capitol Planning Office, Public Facilities Department and the Real Property Department.

2.0 CITY CONCERNS

2.1 Neighborhood Impacts

North End/North Station

- Public Access of pedestrians and vehicles will be significantly impacted during construction. Access plans need to be fully developed before construction.

- Losses in Parking are evident in these areas: 400 at the Anelex Building and an estimated 370 in other public/private locations, replacement parking and locations need to be identified and confirmed.

- Ventilation Tower design and setting will have urban design and air quality consequences. The ventilation tower's design should meet necessary asthetic and emission control standards.

- Business Displacement is severe in this area: 62 tenants and 2200 employees in the Anelex Building and the Charles River Building.Businss displacement and relocation plans must be developed.

- Environmental Impacts such as noise, dust, diminished water quality and vibrations will result from the project's construction. Pre-construction mitigation measures should be determined.

East Boston

- Severe Traffic Impacts will result if there is no alternative plan developed for construction vehicles and spoil removal. Mitigation measures, such as busing workers and removing spoil by barge from Airport property, should be provided.

- East Boston Stadium will be affected by temporary land takings and noise, dust and air pollutants. Steps should be taken to insure the continued use of this recreational facility. Environmental impacts should be mitigated through the use of noise and dust barriers around the construction site.

- Ramp and Connecting Roadway Designs currently present potential bottleneck locations. Study should be pursued with the City as an active participant in the decision making process.

- Capacity and Queuing Problems may occur shortly after the project's implementation at the project's Route 1A connection, Bell Cirle and/or at the Boardman Street - Route 1A

intersection leading to continued problems for the local street network.

- Redesign of Bell Circle and Routle 1A should be studied and consideration should be given to a newly constructed Logan /East Boston Piers Access Road.

- Logan Airport Growth can and more than likely will take place as a result of improved access. East Boston and other neighborhoods will be negatively impacted due to increased flights, potential land use expansion and increased ground traffic and parking demands. A responsible growth management policy must be developed by the State and Massport Authority prior to the project's construction. Negative impacts should be identified, mitigated and controlled e.g. noise regulations, parking freeze, number of flights, passengers, etc.

South Boston/Fort Point Channel

- Public Access of pedestrians and vehicles will be disrupted during the project's construction; prior implementation of the planned Seaport Access Road is essential to the area.

- Red and Blue Line Transit Connection parallel to tunnel/Seaport Access right of way should be incorporated into the project's planning process.

- The Summer Street - L Street Corridor will be affected by increased traffic. The corridor must be preserved as a residential corridor.

- Bridge Improvements must occur prior to the project's construction. Northern Avenue, Congress Street and the three Summer STreet bridges require specific attention.

- Boston Marine Industrial Park will experience temporary land takings and parking losses. Replacement parking and other necessary mitigation measures should be provided as part of the construction project.

- Vibration and other environmental impacts are evident in this area.

- Water Volumes need to be maintained in the Channel for cooling purposes at the Gillette manufacturing plant. Appropriate construction and mitigation measures should be employed to insure the integrity of the manufacturing processes of this major employer.

- Business Impacts such as the U.S. Postal Office, Stone and Webster and Boston Wharf should be minimized. Replacement parking, roadway design and access issues should be more thoroughly addressed in the project.

- A Grid Pattern for new roadways and block type parcels should be incorporated in to the planning for this area. Modification to roadway alignment should be considered within and beyond project limits.

Downtown

- Traffic Impact Shifts, for example, State Street will experience relief but Pearl street and Oliver Street (to Northern Avenue Bridge) will be impacted. The new plan must be fully tested for levels of service.

- Boston's Real Property Department loses 10 surface lots, 745 spaces and $189,000 monthly income. The State is committed to replacing all parking during and after construction, but replacement planning must be closely conducted with the City.

- Public Access of pedestrians and vehicles in and out of the Waterfront area will be disrupted.

- Utility Supply, Capacity and Replacement needs careful review and should be pre-planned and defined before construction.

- New roadways that result from the project should be designed to improve pedestrian and vehicle access beyond existing conditions.

- Environmental Impacts such as dust, noise, vibration and air pollution should be adequately controlled.

South End/Chinatown/South Bay

- Herald Street Extension/New Broadway Bridge must be initiated early in the project.

- East Berkeley Street must not carry heavy volumes or be adversely affected.

- Dewey Square area plans make many changes in local street patterns and must be fully tested.

- The New Dorchester Avenue/Summer Street intersection appears inadequate to handle the traffic assigned.

- Kneeland Street will carry heavy volumes during construction.

Mitigating measures are needed.

- Hazardous Cargo Vehicles are a special concern, all efforts must be taken to ensure the public's safety.

2.2 Development - The air rights development provides the opportunity to mend the extensive damage done to the city fabric when the original highway was constructed in the 1950's. The 20 plus acres which will be made available provide the opportunity to develop new housing, commerce and open space for the City.

- The State must provide the formal mechanisms and funding to the City to undertake the extensive planning, engineering, urban design, financial feasibility and citizen participation work necessary to accomplish the development of the air rights.

- The appropriate load-bearing foundations necessary to support the air rights development must also be provided for by the State.

- The State must clearly recognize that the City will be solely responsible for the disposition of the development rights.

- In making urban land takings to accomplish the Depressed Central Artery and Third Harbor Tunnel the ownership rights must remain with the City or be conveyed back to the City.

- To accomplish development for the benefit of the City and its neighborhood, the development must fit in with the immediate environs and reflect the City's planning process.

- Titles, air rights and parcels created by the Depressed Artery must be administratively and/or legislatively transferred from the State to the City.

2.3 Public and Alternative Transportation - The project will alter Boston's transportation system, it is important that attention be paid to transit improvements during and after construction.

- Circumferential transit corridors should be integrated into the project's design.

- Consideration should be given to three rapid transit projects:
  1) Charles to Bowdoin Connection
  2) Red Line Connection loop into Fort Point Channel between Broadway and South Station, and
  3) A South Station to Airport transit connection via Fort Point Channel area.

- Further integration of the automobile and transit modes should

be considered by building parking garages within the development area which are integrated into the project ramps and related transit systems.

- Provision of water transportation during construction should be considered to provide replacement access for people inconvenienced by the construction project.

- Satellite parking for commuters and construction employees should be developed preferably near transit locations.

2.4 Environmental Issues - Both the physical construction of this project and its operation will create a wide range of environmental problems, including the generation of noise, dust, and other pollutants, vibrations and diminished water quality. Much of this impact will affect adjacent residential neighborhoods and commercial areas of the City, particularly the North End, Waterfront, Chinatown, East Boston and South Boston areas. Adequate controls must be imposed.

- The EIS states that emissions from the ventilation buildings will severely exceed the State's policy level for one-hour NO_2 concentrations. To assure that these impacts on the City's environmental quality are mitigated to the greatest extent feasible, it is essential that the State cooperate with the City in establishing effective measures for monitoring and compliance.

- Archaeologic and historic resources need to be addressed more strongly and reviewed by the City.

- We have serious concerns about filling sections of the Fort Point Channel.

- The proposal for two ten-hour construction shifts suggests special problems related to noise, vibration, dust, lighting, etc.

- Historic sites must be stabilized before pile driving.

- Staging areas must be carefully planned and meet environmental criteria.

- Mitigation measures to contain sediment during dredging operations need to be outlined and approved.

- The location for dumping dredged spoil must be carefully planned and approved.

- The extensive use of slurry wall construction may result in

major problems of disposing of dewatered bentonite slurry.

- Construction must be coordinated with CSO projects at Fort Point Channel and Logan Airport.

- The project should be used to enhance Boston's recreation facilities and open-space.

2.5 Public Access - During the entire construction period, it is imperative that both vehicular and pedestrian access be maintained to and from the several neighborhoods that will be affected by this project. Concern is particularly critical for the North End, North Station, South Station, South Boston and Harborpark areas, whose very existence depend on safe and convenient pedestrian links and an adequate local roadway network.

- Plans to accomodate parking need to be established for those areas that will be negatively affected.

- Signage during construction must be clear and consistantly updated.

2.6 Design and Alignment - The design and alignment of the tunnel/artery facility has to be coordinated with the City's effort to redevelop major areas of the City, particularly the North Station, Fort Point Channel, and South Boston areas, so as to minimize the disruption of the existing and proposed urban fabric.

- The current plan leaves the elevated Storrow Drive connector ramps in place in the North Station area and adds additional intrusive elements which could seriously impede the Authority's efforts to redevelop this area.

- In the South End, the ramp design could be modified to facilitate a connection to the proposed Herald Street extension, which also could be made part of this project.

- In the South Boston area, large open trench construction makes little provision for air rights development.

2.7 Jobs and Displacement - Although the EIS identifies the problems with the interruption of businesses adjacent to the project site, including the total or partial taking of 31 properties involving 131 businesses and 4,400 workers, it does not adequately address potential secondary business and residential displacement that is likely to occur.

- Significant issues include the disruption of adjacent neighborhood businesses and living patterns due to the

construction-related impacts.

- Decreased rents and increases in residential vacancy rates can result from a reduced quality of life during the construction period. Similarly, rising rents and displacement can result from enhanced property values after completion.

- It is important that the State develop specific programs to provide assistance to business owners and residents who may be affected. These programs, such as financial assistance and public information, are of such importance that they should be run by the City under a federal-state contract.

- Construction jobs created by the project should comply with the City's Job Ordinance.

- A fund for a construction job training program should be established.

2.8 Community Involvement

- An active community review process must be established and adequately funded to review the highway plans as they are further defined.

- The community involvement must be maintained throughout the construction period to provide a mechanism for resolution of any construction-related problems.

- An on-going public information and education program should be established.

2.9 Funding

- The City will experience financial losses and be required to increase various planning, basic and public safety services as a result of the project.

- A contract mechanism needs to be established between the City and State which will allow for State funding of the City's project related expenditures.

- A number of capitol and infrastructure programs will need to be either adjusted or implemented. Public facilities and roadway improvements associated with the construction and implementation of the project should be funded by the State.

Summary

Logan Airport is the eleventh busiest airport in the world and is growing at a faster pace than many of the top ten. Passengers at Logan doubled in the last 12 years and are expected to double again in the next 20 years. Air cargo, particularly international freight, is also booming while commercial development at Logan has been planned to complement business use. The economic, employment, and fiscal benefits of Logan's boom has been good for Boston and the region but the costs of growth must also be recognized and remedied. A list of primary costs include: ground access problems, traffic congestion, parking shortages and noise as well as constraints on terminal space, baggage and cargo handling facilities, and passenger services.

Massport is currently pursuing long-range and short-range remedies for the problems of capacity at Logan Airport. The long-rang solutions include the Harbor Tunnel/Artery project and a Regional Airports Strategy designed to reduce traffic problems and spread Logan's growth across the region. In the short-run Massport is trying many new projects to encourage transit use and off-site parking as well as respond to air traffic noise problems. Future growth at Logan will benefit Boston even more and accommodate business, convention and tourist growth in the City. This growth, however, will only bring benefits if current problems and future are met by visionary planning solutions.

FACT SHEET

- In terms of passengers, Logan is the 11th busiest airport in the world; 10th busiest in the U.S.
- In 1985, Logan had a total of 20.5 million passengers and 350,000 takeoffs and landings.
- Logan ranked 17th in cargo shippage with 303,960 metric tons in 1984.
- In growth, Logan's passenger load rose 38.9% between 1980 and 1985; cargo shipments increased by 31.4%; total flights were up 35.6%.
- Between 1975 and 1985, the number of total passengers to pass through Logan nearly doubled, from 10.5 to 20.5 million.
- Massport expects the number of passengers to double again (to 40 million) in 20 years.
- Many major cities have more than one airport: New York (3); L.A. (3); D.C. (3); SF/Oakland/S.J. (3); Miami (3); Houston (2); Dallas (2).
- Possible sites for new airports: None under serious consideration, and none identified by our staff.
- Airports that could be expanded: Worcester, Providence (R.I.), Manchester (N.H.), Portland (Maine), and Hanscom Field (Bedford).
- Hanscom Field is 18 miles outside of Boston and was originally built as a military airbase. It primarily serves corporate and general aviation aircraft, but could accommodate larger aircraft as well.
- Staff were unable to find state or federal subsidy programs to help fund a new or expanded airport; however, the FAA helps fund tower and control facilities. (Massport bonds would cover infrastructure).
- Staff is unaware of whether other major cities' airports are located in residential neighborhoods.
- Logan generates 81,200 person-trips on average every day; this is a 39% increase over 5 years.
- Model split: 69% private car; 13% taxi; 9% MBTA/bus; 7% rental car; 2% other.
- Of total person-trips, 58% are passengers, 25% are employee commuter, and 17% are employee mid-day trips.
- 20,600 parking spaces are available for Logan -- 9,500 at the airport, 5,900 employee, and 3,000 off-site in E. Boston.
- Remember that on Thanksgiving weekend 1985, all parking spaces were filled on two days.

Logan Airport Compared To Other U.S. And World Airports

Logan Airport in Boston is one of the busiest airports in the world. In 1984 Logan Airport ranked eleventh of all world airports in terms of total commercial passengers with 19.4 million. Of the ten busier airports, nine were American airports (O'Hare in Chicago ranked first) and only one airport was outside of America (Heathrow in London ranked sixth). Also in 1984 Logan airport ranked in the top twenty airports in the world on the other two measures of cargo and flights: Logan ranked seventeenth in total cargo tonnage shipped with 303,960 metric tons and nineteenth in total flights with 341,701 takeoffs and landings.

In 1983, Logan airport also ranked eleventh in total passengers but rated lower in the other two categories, ranking twenty-fifth in total cargo and nineteenth in total flights. Between 1983 and 1984 Logan passengers rose 8.8 percent, and total flights rose 8.6 percent. The only airports of the top ten to grow faster than Logan in total passengers served between 1984 and 1985 were Newark (35.9 percent), Dallas (20.5 percent) Stapleton in Denver (14.1 percent), and Heathrow in London (9.0 percent).

Boston's Logan Airport has five of the 61 busiest air passenger routes in America according to a 1985 sample survey. In fact, the Boston-New York route is the single most heavily travelled route in America. The other major Boston routes were: Boston-Washington (27th), Boston-Chicago (45th) Boston-Philadelphia (51st), and Boston-Los Angeles (61st). Only airports in New York, Newark, Chicago, and Los Angeles had a greater number of heavily travelled air passenger routes out of the top 60.

Although about 10 cities have more than one airport very few cities have two or more that rank in the world's top 100 busiest airports. Only New York, Washington, Houston, and Dallas have two airports in the top 100. However, considering metropolitan or regional areas, a larger number have two or more busy airports: New York (3), Los Angeles (3), Washington (3), San Francisco/ Oakland/San Jose (3), Miami/Ft. Lauderdale/Palm Beach (3), Houston (2), and Dallas (2).

Without a detailed review there is no way to determine which major U.S. airports are directly in residential areas. Most airports do have a noise and traffic impact upon residential areas because of their size and the proximity of flight patterns. It can be assumed that airports which are farther from their city center or in smaller metro areas have less of an effect. Several major airports which are in industrial or remote areas include: O'Hare in Chicago, Kennedy in New York, and Dallas/Fort worth.

Boston-Logan Airport Growth Projections

Between 1975 and 1985 total passengers served by Logan Airport nearly doubled from 10.5 million to 20.5 million. Growth rates approached ten percent annually in several years over the last decade, registering a 5.4 percent rate for 1984-1985. Preliminary 1986 figures show a 5 to 6 percent rise. While no detailed future projection are done by Massport they do have short-term and long-term estimates. Short-term (five years) projections are for 5 percent annual growth and long-term (twenty year) projections are for 1.5 percent annual growth. Massport's Planning Department expects air passenger travel to double (40 million) in another 20 years.

Logan Airport's air travel facilities are not currently planned for major expansion. No new runways are planned to be built. Expansion of terminal E is being considered and a feasibility study is presently in progress. With the major expansion and improvement of facilities over the last twenty years Logan Airport is an adequate modern airport. Logan Airport can handle all new jets built to date and has even accommodated the Concorde supersonic jet on an occasional emergency situation from New York. See the final section for a discussion of a regional airport strategy and alternatives for a new airport. Massport's capital planning for future growth is primarily based upon improvement of existing air traffic facilities (terminals, safety noise control, etc) as well as ground transportation access improvements.

Logan Air Cargo Shipments

Air cargo is becoming an increasingly larger component of Logan Airport's activity. Logan has entered the list of top twenty airports handling domestic and international shipments. Air cargo, which include mail and freight, increased in total pounds by 31 percent between 1980 and 1985. In 1985 domestic cargo totalled 497 million pounds consisting of 110 million pounds of mail (22%) and 387 million pounds of freight (78%). International cargo in 1985 totalled 169 million pounds consisting of 10 million pounds of mail (6%) and 159 million pounds of freight (94%). Therefore, the domestic and international shares of total cargo were 75% and 25%. Over the last five years the share of international cargo has increased modestly as a percentage of total shipments.

Air freight is comprised mainly of goods that have high value to weight ratio which includes items such as precious metals, communications equipment, computers, instruments, machinery, pharmaceuticals, and medical supplies. Boston, as an economy specializing in high-technology, medical, and other high value products, is well-suited to use air freight services. Air mail shipments are also booming, accommodated by the proliferation of courier delivery services which provide the quick, efficient handling of packages generated largely by financial, professional, and business services.

An international air freight study done by Data Resources Inc. for Massport analyzed the size, value, and geography of imported and exported goods at Logan Airport in 1983. Logan ranked as the sixth largest internation air-freight gateway in the U.S. behind New York, Los Angeles, San Francisco, Chicago, and Miami. Together, these six cities accounted for 90 percent of all American international air freight. Although Boston's poundage shipments

of exports to imports was about even (68 to 63 million) the value of export to import shipments was much greater ($2.1 billion to $937 million). While American international air freight was more evenly distributed among Europe, Asia, and other continents about 80 percent of all of Boston's shipments were to Europe. In particular the United Kingdom, Germany, Canada, Switzerland, France, Italy and Ireland accounted for about three-quarters of all exports and imports combined. Exports form Logan to foreign countries were dominated by computers, measuring instruments, communications and telephone equipment, air craft engines and parts, precious metals, and other machinery. Imports, less than half of export value, were more widely dispersed among products including electrical equipment, business machinery, scientific instruments, optical goods, pharmaceuticals, leather goods, and other products.

Domestic freight accounts for 75 percent of all Logan freight. No detailed analysis of domestic freight is available although a study of goods and destinations is currently underway. It is estimated that Boston probably ships out a higher value of finished goods than it receives of intermediate goods because of Boston's specialization in high technology industries. A detailed analysis of domestic freight will be received from Massport when completed.

Massport, recognizing the growth of air cargo, is currently pursuing development of facilities at Logan Airport to accommodate air freight operations. Development at the 90 acre site called Logan South is designed to consolidate air freight facilities, upgrade freight handling capacity, improve cargo services, and complement trade through related commercial developments. These efforts are designed to create more efficiencies and to promote business activity.

Regional Air Service Strategy

Massport and the Commonwealth of Massachusetts are pursuing a regional air service strategy. While future capacity at Logan is limited and long-term projections show a near full utilization of facilities, the development of auxiliary state and regional airports is viewed as necessary. The Massachusetts Aeronautics Commission and Massport are looking to other airport locations which could take some strain of growth off Logan as well as reap some economic benefits. Worcester Municipal Airport has been the focus of the most attention as the center of a significant market while other sites are also receiving attention. After years of limited progress, airports at Worcester, Providence, Manchester (N.H.), and Portland have begun to get busier but issues of modernization and expansion will need to be addressed.

Hanscom Field, located 18 miles from Boston in Bedford, Massachusetts, is the closest airport to Logan. It primarily serves corporate passengers and general aviation service. Hanscom was built as a military airbase and can accommodate larger aircraft, as well. Attempts to use Hanscom as a commercial airport have met with little success because of surrounding residential neighborhoods, lack of large commercial service facilities, and ground transportation difficulties. Recent improvements of hangers, towers, instrumentation, and other facilities are greatly improving Hanscom's capabilities for handling corporate and leisure aircraft. In 1985 Hanscom's flights increased by 7 percent.

In the Eastern New England region there are four major airports other than Logan which are part of a regional strategy to spread air transportation services more efficiently for passenger convenience: Worcester Municipal Airport, T.F. Green Airport in Providence, Manchester Airport in southern New Hampshire, and Portland Airport in southern Maine. Until about three years

ago these airports were not growing like Logan in Boston primarily because of the lack of competitively priced service and convenient commercial airline schedules. Since 1983, however, these airports have grown in use following upgraded service. Air passengers nearly doubled between 1982 and 1985 in Providence and Portland, while Worcester and Manchester have also shown gains.

For the future several factors are important considerations in the success of a regional airports strategy:

1. Most of the regional airports will need modernization and/or expansion with increased use.
2. Airline carriers, routes, and pricing will have a strong effect upon use of regional airports.
3. Individual consumer habits in using airports will need to change.
4. The ground access issues of Logan airport will affect use of other sites.
5. Logan Airport will continue to dominate the region because of its diversity of airlines and flights, international travel, and coast-to-coast and non-stop domestic services.

The possibility of an alternative site near Boston for a new airport does not seem to be a popular alternative. Little mention is made of this by Massport most likely because of the few large quality sites and proximity of neighborhoods and towns. New airports are expensive to develop, too. Fiscally, FAA funding only applies to tower and control facilities while land and infrastructure are usually funded by bonds. Massport funds most of its capital improvements by revenue bonds which usually go to expansion and modernization of existing facilities. It is doubtful that Massport would or could use new revenue bonds to develop a new airport or that regional cooperation on general obligation bonds would work.

Ground Access, Traffic, and Parking At Logan Airport

A major challenge to the continued growth and efficiency of Logan Airport are the problems of ground access, traffic congestion, and parking. The 85 percent rise in commercial passengers over the last decade has intensified vehicle use on limited transportation facilities. Massport planners acknowledge that present and future use of Logan makes congestion the "major threat to the economic health of the entire region." Accordingly Massport is pursuing efforts to address the problems of ground transportation.

The Massachusetts office of Environmental Affairs has ordered Massport to prepare a Logan Ground Access Improvement Study E.I.R. as a planning document analyzing conditions and suggesting actions. This final report is not yet available but will be provided upon completion. In the meantime a few items of technical data are available for review from a background study. Logan Airport generates 81,200 person-trips on the average day up by 22,800 (39 percent) in five years. The modal split of person-trips is: 69% private care, 13% taxi and limousine, 9% MBTA and bus, 7% rental car, and 2% other. This mode use has remained virtually constant over the 5 year period. Total person-trips is separated into three categories: 58% air passengers, 25% employee commuters, and 17% employee midday trips. The greatest number of auto trips originated within route 128 particularly from the North Shore. The most transit trips were generated in Downtown Boston and the near North Shore. In summary, this report showed that auto use increased at almost the same rate as growth of Logan's air services and that transit use was not becoming more popular.

The major long-term solution to ground access problems is the $2.2 billion third Harbor Tunnel/Centeral Artery Depression project. Since this project would only be completed in 10 to 12 years at the earliest other immediate remedies are being pursued.

1. Improving terminal access, parking, circulation, baggage, and cargo services.
2. Streamlining the airport roadway.
3. Advertising public transportation
4. Using free bus service from the T stop to terminals
5. Developing water taxi service between the airport, downtown, and the South Shore.
6. Building the Red line-Blue line transit connector.

Specific long term strategies include

1. Planning for the Harbor Tunnel/Artery project.
2. Pursuing a Regional Airports strategy
3. Planning for satellite terminals and people movers.

The other major ground access problem is parking. In 1984 Logan was served by 9,500 off street public parking spaces at the airport, 3,000 parking spaces off-site from Logan in East Boston, and 5,900 employee parking spaces. In addition support spaces for taxis, etc. totaled 600 and car rental spaces numbered 2600. A total of 20,600 parking spaces is currently provided for all airport related uses. The specific problem is public lots and garages subject to the freeze of 10,400 spaces. Over the Thanksgiving Day weekend in 1985 public space were completely filled on two days. Massport has been promoting park-and-ride at off-site, remote, reduce-rate parking lots in suburban

locations with use of express shuttle buses. The other public transportation promotion efforts are designed to reduce auto use but have met with limited success so far. Clearly ground access issues are crucial problems to the future growth of Logan Airport.

Table 1

INVENTORY OF PARKING FACILITIES

LOGAN INTERNATIONAL AIRPORT

May 1980

SUMMARY

Code No.	Primary Classification	Capacity	Frozen Spaces
100	Public Revenue Lots and Garages	9,532	
200	Airline Support Services	256	
300	Taxi - Bus - Limosine	280	
400	Airport Administration	2,159	
500	Passenger Services	1,902	
600	Air Cargo	1,012	
700	Fixed Base Operations	573	
800	Car Rentals	2,611	
	TOTAL	18,325	
900	Off Airport Facilities	3,289	
	GRAND TOTAL	20,614	

Park and Fly Lots

The issue from the community's perspective includes "park and fly" lots but extends well beyond them. "Park and fly" lots per se are now and have been since the imposition of the "Limited Parking District" in 1983 a forbidden use. There presently are 10 licenses in East Boston (not counting anything on Massport property) for paid parking lots. They are clustered in two areas -- the Bremen Street Corridor and along McClellan Highway.

Aside from the park and fly lots themselves, there has and continues to be an intrusion of rent-a-car operations and rent-a-car related operations. There are presently approximately 13 such operations in existence in East Boston -- again not counting operations on Massport property.

Also high on the list of community concerns is the proliferation of freight forwarding and related operations. What all of these operations have in common is that they are all high traffic generators in a community in which, with the airport and two (and a proposed third) tunnels, which is already heavily impacted in this regard.

Airport Activity Comparisons: Passengers, Cargo, Flights

Logan Airport vs. Other World Airports

Boston-Logan (1984)

Ranked #11 in the world in commercial passengers

Ranked #17 in the world in total cargo tonnage shipped

Ranked #19 in the world in total flights

Boston-Logan (1983)

Ranked #11 in the world in commercial passengers

Ranked #25 in the world in total cargo tonnage shipped

Ranked #19 in the world in total flights

Only world city airport outside the U.S. that carries more passengers is Heathrow Airport in London.

Most Heavily Travelled American Air Routes - Passengers

Boston-Logan has 5 out of the top 61 busiest air-passenger routes according to a 1985 sample survey.

The Boston-New York route is the single most heavily travelled route in the U.S.

Major routes including Boston in the top 61 and their ranking:

1. Boston-New York
27. Boston-Washington
45. Boston-Chicago
51. Boston-Philadelphia
61. Boston-Los Angeles

AIR TRANSPORTATION DATA FOR METRO REGIONS WITH MORE THAN ONE OF THE WORLD'S 100 BUSIEST AIRPORTS, 1984

	Passengers	Total Cargo Tons	Total Flights
New York	64,129,124 (1)	1,445,740 (1)	896,684 (2)
Los Angeles	39,067,834 (2)	886,670 (2)	1,171,743 (1)
Dallas	32,055,795 (3)	334,546* (5)	742,765 (6)
San Francisco (Oakland, San Jose)	29,631,537 (4)	513,663 (4)	1,065,487 (2)
Miami (Ft. Lauderdale, Palm Beach)	28,751,526 (5)	567,678 (3)	798,628 (4)
Washington	22,238,097 (6)	217,776 (6)	749,157 (5)
Houston	18,078,341 (7)	78,848 (7)	631,115 (7)

Number of Regional Airports

New York - 3

Los Angeles - 3

Dallas - 2

San Francisco/Oakland/San Jose - 3

Miami/Ft. Launderdale/Palm Beach - 3

Washington - 3

Houston - 2

Cities or Metro Regions with Two or More of the Worlds

100 Busiest Airports, 1984 (Including Distance from Downtown)

New York (2 City, 1 Metro)

- Kennedy International (15 miles)
- Laguardia (8 miles)
- Newark International (16 miles)

Washington (1 City, 2 Metro)

- National (3 miles)
- Dulles (26 Miles)
- Baltimore/Washington (32 miles)

Los Angeles (1 City, 2 Metro)

- L.A. International (17 miles)
- Burbank/Glendale/Pasadena (15 miles)
- John Wayne (N/A - Santa Ana)

Houston (2 City)

- Intercontinental (20 miles)
- Hobby (10 miles)

Dallas (1 City, 1 Metro)

- Love Field (6 miles)
- Dallas/Fort Worth Airport (13 miles)

San Francisco (1 City, 2 Metro/Region)

- S.F. International (16 miles)
- Oakland International (18 miles)
- San Jose Municipal (N/A)

Miami - Palm Beach - Fort Lauderdale (1 City, 2 Metro)

- Miami International (7 miles)
- Palm Beach International (N/A)
- Fort Lauderdale/Hollywood (N/A)

Cities With One Airport of the Worlds 100 Busiest, 1984

(Including Distance From Downtown)

Chicago	O'Hare International (18 miles)
Atlanta	Hartsfield International (9 miles)
Denver	Stapleton International (3 miles)
Boston	Logan International (3 miles)
St. Louis	Lambert International (15 miles)
Honolulu	Honolulu International (N/A)
Pittsburgh	Greater Pittsburge International (17 miles)
Seattle	Sea-Tac International (13 miles)
Las Vegas	McCarran International (7 miles)
Detroit	Detroit Metropolitan Wayne County (20 miles)
Philadelphia	Philadelphia International (7 miles)
Minneapolis	Minneapolis/St. Paul International (10 miles)
Phonenix	Sky Harbor International (3 miles)
Tampa	Tampa International (5 miles)
Orlando	Orlando International (8 miles)
Charlotte	Charlotte/Douglas International
Salt Lake City	Salt Lake City International (3 miles)
San Diego	San Diego International (N/A)
New Orleans	New Orleans International (N/A)
Cleveland	Cleveland/Hopkins International
Kansas City	Kansas City International
Memphis	Memphis International
Portland, Oregon	Portland International
San Antonio	San Antonio International

EB1/I/070786/22

Cincinnati	Greater Cincinnati International
Kahului, Hawaii	Kahului Airport
Buffalo	Greater Buffalo International
Hartford	Bradley International (Windsor Locks)
Columbus, Ohio	Port Columbus International
Albuquerque	Albuquerque International
Milwaukee	General Mitchell Field
Indianapolis	Indianapolis International
Norfolk, Virginia	Norfolk International
Reno, Nevada	Cannon International
Anchorage, Alaska	Anchorage International

WATER TRANSPORTATION

Water transportation for commuters has rapidly expanded from 300,000 trips per year in 1985 to an estimated 500,000 trips per year in 1986 with some 24 daily runs from Rowes Wharf. Similarly, Airport Shuttle service has experienced a two-fold increase in usage this season over last season when it first began operation. Major new pier facilities are currently under construction at both Long Wharf and Rowes Wharf, and additional sites are planned. With these new facilities added to the water transportation system, a potential of 5 million trips per year could be realized within a five year time frame.

Within the Inner Harbor developers have proposed various new sites including Harbor Landing in East Boston, Pier 7 at the Charlestown Navy Yard, Hoosac Pier, the Schraffts Center, Lincoln Wharf, the Fan Piers, World Trade Center, and Kennedy Library. Developers are interested in water transportation not only to comply with Chapter 91 regulations but also as an amenity that would add to the value of their projects. Water transportation is particularly attractive at many new development sites that are remote from public transportation and have difficult vehicular access.

Water transportation has great potential to relieve traffic congestion, and to provide links between the downtown, harbor neighborhoods, and Logan Airport. Many unresolved issues need to be addressed, however, to reach this potential. The first of these issues is that, of the many public sector agencies and departments involved in water transportation, there is currently no agency with primary jurisdiction.

On the state side key agencies include MBTA, which subsidizes the Hingham service; and Massport which helps fund the Airport runs. Other state agencies include the Executive Office of Transportation and Construction (EOTC), Division of Waterways (Chapter 91 Review), and Department of Environmental Affairs (Long Wharf/Harbor Islands). Within the city's jurisdiction the BRA, the Department of Transportation and the Department of Environmental Affairs are involved in water transportation. At present, public and private entities are producing some twelve different studies dealing with water transportation. Many of the scopes of these studies overlap.

The second issue is the need to establish a uniform set of standards for the design of docks and other land side water transportation facilities to accommodate various vessel types. Poorly designed facilities result in lengthly delays in docking and in the loading and unloading of passengers and goods. Standards are needed to ensure that docking facilities are compatible, are safe, and are comfortable with heated covered waiting areas and gangways. Chapter 91 is in the process of formulating location and design standards for constructing new facilities.

Thirdly, consensus is needed on schedules for viable routes for various types of service, from rapid turnaround Inner Harbor service, to commuter runs from suburban locations or remote parking sites. Facilities appropriate for visitor travel, including museums and the Harbor Islands, are also needed.

Both the development community and boat operators have responded favorably to the idea of a joint working committee of private and public interests to address water transportation issues. Boston may look to other cities for solutions to water transportation issues. San Francisco uses floating barges or "floating streets" at dock side for ferry loading and un-

loading. Vancouver similarly has effective, state-of-the-art facilities which carry travelers year-round to and from the city center. Reasonable site locations for various trip purposes have been located. The technology for effective efficient comfortable service exists.

BOSTON INNER HARBOR
WATER TRANSPORTATION TERMINALS AND RELATED FACILITIES

I. MAJOR BOAT TERMINALS - COMMUTER, EXCURSION, WATER SHUTTLE/TAXI, CHARTER

1 LOGAN SOUTH 2 ROWES WHARF 3 LONG WHARF

II. MASSPORT CRUISESHIP TERMINAL

4

III. MAJOR REDEVELOPMENT SITES WITH WATER TRANSPORTATION ACCESS

5 EAST BOSTON PIERS
6 THE SHORAFF'S CENTER
7 CHARLESTOWN NAVY YARD
8 CONSTITUTION PLAZA / HOOSAC PIER
9 LINCOLN WHARF
10 FAN PIERS
11 WORLD TRADE CENTER / BOSCON

LANDSIDE FACILITIES
ACTIVE TERMINALS AND LANDINGS
VESSEL BERTHING AND STORAGE
POTENTIAL LANDINGS
FREE PARKING
Scale of Miles
1 LOGAN SOUTH
EAST BOSTON PIERS
MUNRO DEVELOPMENT
ADMIRAL'S HILL
5 THE SCHRAFFT'S CENTER
CHARLESTOWN WHARF 11
CHARLESTOWN PIER 3
8 CHARLESTOWN USS CONSTITUTION
CONSTITUTION PLAZA HOOSAC PIER
LINCOLN WHARF
LEWIS WHARF
12 LONG WHARF
13 CENTRAL WHARF
14 ROWES WHARF
15 200 ATLANTIC AVENUE
16 FAN PIERS
17 COMMONWEALTH PIER
WORLD TRADE CENTER
18 CRUISESHIP TERMINAL
19 KELLEY'S LANDING
JFK LIBRARY
21 MARINA BAY
22 HINGHAM SHIPYARD
23 GRAPE ISLAND
24 BUMPKIN ISLAND
25 NANTASKET BEACH
SPINNAKER ISLAND
27 PEMBERTON PT HULL
28 PEDDOCKS ISLAND
29 GEORGES ISLAND
30 LOVELLS ISLAND
31 GALLOPS ISLAND
32 THOMPSON ISLAND
The Graves
Green Is
Calf Is
The Brewsters
BOSTON HARBOR
Castle
OLD HARBOR
Gallops Is
Georges Is
Rainsford Is
DORCHESTER BAY
Spinnakers
QUINCY BAY
HINGHAM BAY
Bumpkin Is
Nantasket Beach
Slate Is
HINGHAM HARBOR

MEMORANDUM

TO: Stephen Coyle

FROM: Roy Giarrusso, Matthew Lynch

DATE: July 8, 1986

SUBJECT: Powers and Functions of the Massachusetts Port Authority Under Appendix to Chapter 91

§1-3 General Grants of Powers

"(c) To maintain offices at such place or places, either within or without the commonwealth, as it may determine;

...

(e) To construct or acquire additional facilities;

...

(f) To investigate the necessity for additional facilities for the development and improvement of commerce in the city and in the metropolitan area surrounding the city and for the more expeditious handling of such commerce, including but not limited to, additional traffic facilities, bus and truck terminals, off-street parking facilities, and facilities for the handling, storage, loading or unloading of freight or passengers at steamship, railroad or motor terminals or airports, and to make such studies, surveys and estimates as may be necessary to determine the feasibility of any such facility;

...

(g) To extend, enlarge, improve, rehabilitate, lease as lessor or as lessee, maintain, repair and operate the projects under its control, and to establish rules and regulations for the use of any such project;

...

(j) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

...

(k) To acquire in its own name by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by exercise of the power of eminent domain in accordance with the provisions of chapter seventy-nine of the General Laws or any other alternative method now or hereafter provided by law, insofar as such provisions may be applicable,

such public or private lands, or parts thereof or rights therein, and public or private ways as it may deem necessary for carrying out the provisions of this act;

...

(o) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

...

(p) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act."

§1-5 Airport properties

"Title to the airport properties shall be vested in the Authority... and there shall be vested in the Authority the control, operation and maintenance of the airport properties... provided, however, that the Authority shall assume all of the obligations and have the benefit of all the rights of the commonwealth in and to all leases, contracts and agreements relating to the airport properties and existing on the date of the transfer..."

§1-6 Port properties

... title to the port properties shall be vested in the Authority and the possession of the port properties shall be transferred to the Authority;

...

Upon transfer of the port properties there shall be vested in the Authority the control, operation and maintenance of the port properties... provided, however, that the Authority shall assume all of the obligations and have the benefit of all of the rights of the commonwealth in and to all leases, contracts and agreements relating to the port properties and existing on the date of the transfer...

Upon transfer of the port properties the Authority shall make all necessary plans for the development of the port of Boston. The Authority shall concern itself with the condition and location of piers, switching, floatage, lighterage, rates, rules, regulations and practices, dockage, wharfage, waterfront labor conditions, grain elevator and warehouse facilities within the port of Boston...

Upon transfer of the port properties, all the rights, powers and duties pertaining to the port of Boston commission in respect to lands, rights in lands, flats, shore, waters and rights belonging to the commonwealth in tide waters and in lands under water, within the port of Boston, and any other rights and powers vested by the laws of the commonwealth in the port of Boston commission in respect to the port of Boston not heretofore in this act expressly vested in or imposed upon the Authority are hereby transferred to and hereafter shall be vested in and exercised by the Authority;

...

Massachusetts Port Authority

As its name implies MassPort has traditionally served the City of Boston and the Commonwealth of Massachusetts by constructing, maintaining and operating Logan Airport and several seaport facilities. The Tobin Bridge is also owned and operated by MassPort. However, in addition to MassPort's more traditional transportation-related infrastructure, the Authority has also begun to provide the infrastructure necessary for several large-scale, mixed-use developments on various piers and waterfront properties.

In recent years, MassPort has consistently been able to generate a level of revenues from fees, rent, and investment returns which exceed it operating expenditures. This operating surplus has provided MassPort with both current funds and revenue bonding capacity with which to expand and maintain its facilities. As shown in Table 32, MassPort's infrastructure expenditures in Boston between fiscal 1978 and 1983 exceeded $272 million. An additional $95 million in capital investment is underway or planned for fiscal 1984 and 1985. The majority of Massport's previous and planned capital investment from 1978-1985 is in Logan Airport, but substantial amounts have also been budgeted for the Tobin Bridge, the marine terminals and several development sites.

Several ongoing projects, such as the construction of the MassPort Marine Terminal, the renovation of Terminal C at Logan and varied developments at Bird Island Flats, Fish Pier and Commonwealth Pier are expected to dominate MassPort's capital investment in the near future. In the intermediate term, expansion of the air facilities at Hanscom Field in Bedford and private development of MassPort's East Boston Piers will also become priority projects. Over the longer term, MassPort's capital spending will be shaped by the need to integrate the northern terminus of the Third Harbor Crossing

into Logan Airport's internal roadway system and by investments needed to complete the MassPort Marine Terminal. These two projects are likely to require $150-200 million in the late 1980s and the 1990s. The following provides a slightly more detailed discussion of MassPort's recent capital investment record and future plans.

MassPort's Tobin Bridge is an important access route for Boston commuters and trucked goods. Each year the bridge conveys approximately 25 million vehicles between Boston and Chelsea. Since 1979 toll revenues from Tobin Bridge have hovered between $5.5 and 6.0 million/year. These revenues have been more than sufficient to pay for the $12.5 million in capital improvements to the bridge made between 1979 and 1983. Another $6.2 million in capital improvements and maintenance for the bridge is budgeted for 1984 and 1985. This steady stream of investment, supported at least indirectly by the bridge's toll revenues, has kept Tobin Bridge in generally good condition.

MassPort's maritime facilities include several marine cargo terminals collectively known as the Port of Boston, as well as various fishing piers and waterfront development sites. The Port of Boston consists of the Conley Terminal in South Boston, the Moran Terminal in Charlestown and another terminal presently under construction on land leased from EDIC at the Boston Marine Industrial Park. Table 32 shows the investment record and current investment plans at these marine cargo terminals. In addition to the ongoing construction of the new Massport Marine Terminal at BMIP nearly $8 million have been spent for the modernization of Moran Terminal and another $36 million for wharf improvements and construction of a new containerport facility at Conley Terminal. For 1984 and 1985 an additional $9.6 million is scheduled for MassPort's three marine terminals. In the late 1980s and early 1990s much larger amounts of capital, perhaps as much as $70 million, will be needed if the Massport Marine Terminal is to be successfully completed.

Despite these capital investments to modernize and expand the Port of Boston, the Port remains troubled. Total cargo tonnage passing through the Port has declined from 1,000,000 to 700,000 tons between 1979 and 1983. It is expected to fall another 100,000 tons by 1986. Technological change, high labor costs, frequent labor disputes and on-land traffic congestion have all been cited as contributing to the decline in the Port's business. For example, a recent labor dispute over the operation of the new containerport at Conley Terminal delayed the opening of that facility for almost two years. Yet, despite recent troubles, the Port of Boston still handles 51 percent of the dollar value of all shipments to and from Boston. This underscores both the importance of the Port to the City and the need to formulate policies to reverse its recent decline.

Though the Port of Boston is in the midst of hard times, the redevelopment of three of MassPort's underutilized piers seems certain to significantly benefit Boston's economy. The Boston Computer and Communications Market Center (BOSCOM) located at Commonwealth Pier, a new fish processing plant and office space at Fish Pier, plus the mixed-use redevelopment of Hoosac Pier are all underway or planned. At each of these sites MassPort has provided many of the infrastructure improvements needed to attract this wide range of private development. Between 1978 and 1983, MassPort has expended more than $22 million to upgrade the basic infrastructure of these development sites. However, important supporting infrastructure investments remain to be completed, both by MassPort and other agencies. These include the reconstruction of Northern Avenue and Northern Avenue Bridge, construction of the Seaport Access Road, and parking and boat terminal facilities.

Another area where MassPort is engaged in a public-private mixed-use development is at Bird Island Flats in East Boston. The Bird Island Flats development consists of a new air cargo facility to be constructed by MassPort and a research, production, office and conference complex to be known as the Massachusetts Technology Center. The Technology Center will be constructed privately, but it is supported by several million dollars in basic infrastructure investment by MassPort.

In the public mind, MassPort is primarily associated with Logan Airport. With Logan Airport likely to continue absorbing over half of MassPort's capital investment expenditures throughout the 1980s, this association on the part of the public is understandable. The expansion of Logan parallels the rapid growth of Boston's services-based economy and the region's high-tech development. From 1978 to 1982, despite a severe national recession, passenger service at Logan Airport increased by more than 21 percent, while air cargo tonnage increased by more than 32 percent. Facilitating and responding to Logan's increased passenger and cargo service has been over $145 million in capital investment at the Airport since 1978. Another $48 million is planned through 1985 and the integration of the proposed Third Harbor Crossing into Logan's internal circulation system will entail upwards of $100 million in capital improvements in the late 1980s and the 1990s.

Logan's rapid expansion has however incurred more than just capital investment costs. There have been a number of disputes between Logan's administrators and their East Boston neighbors. At issue has been the infringement of the expanding airport on East Boston's residential neighborhoods, as well as the noise pollution that has come with Logan's growth. MassPort has responded to these problems by promoting the use of quieter aircraft, changing flight patterns and investing in noise abating capital

improvements at Logan and in the surrounding communities. MassPort's capital expenditures for noise abatement totaled $5 million between 1978-83. This total is budgeted to reach nearly $9 million by FY1986 (see Table 32).

As previously mentioned, MassPort has financed the bulk of its past capital investments out of current own source revenues and through the proceeds of revenue bond sales. MassPort's internal funding sources have been supplemented however by a substantial amount of grants-in-aid. Between 1978 and 1983 capital grants received by MassPort totaled almost $44 million or approximately fifteen percent of total Massport capital investments. A similar percentage of grant funds are expected for fiscal years 1984 and 1985. These general financing arrangements, i.e., predominant use of retained earnings and revenue bonds, supplemented by grants-in-aid, are expected to continue indefinitely, with perhaps some reduction in the use of revenue bonds if interest rates climb.

MassPort's dependable stream of internally generated revenues has permitted it to pursue an expansive capital investment program. In addition, the dedication of a portion of MassPort's annual operating surplus to a Maintenance Reserve Fund has permitted the Authority to adequately maintain its expanding capital stock. Overall, MassPort's investment program has provided essential support to the City's growing economy. It is hoped that a more stable labor environment and the completion of supporting highway investment will unlock the productivity of MassPort's ongoing investments in the Port of Boston. Boston and the entire region are however already receiving the benefits of MassPort's recent and planned investments at Logan Airport, Bird Island Flats, BOSCOM and elsewhere. The City of Boston also receives the benefit of MassPort's in-lieu-of tax payments which, for 1984, totaled $4.9 million.

Table 32

SUMMARY OF MASSACHUSETTS PORT AUTHORITY CAPITAL INVESTMENTS, 1979-81;
FUTURE PLANS 1984-85
($000s)

	Neighborhood(s)	Past Investments 1978	1979	1980	1981	1982	1983	Future Plans 1984-1985
Tobin Bridge		38	158	2,382	5,001	2,503	2,475	6,218
Maritime								
Moran Terminal	Charlestown	1,000	81	873	2,613	2,224	113	1,495
Mystic Pier	Charlestown	12	29	275	852	2	134	32
Castle Island/Conley Terminal	South Boston	331	88	2,945	17,598	14,050	927	5,525
E. Boston Pier	East Boston	0	0	28	88	0	39	0
Army Base	South Boston	0	0	0	0	26	506	100
Little Mystic Channel Bridge	Charlestown	0	81	165	201	213	19	0
Marine Terminal at BHIP	South Boston	0	0	505	9,037	13,118	1,820	2,588
Unallocated Equipment		0	1,359	3,283	386	99	485	1,740
Miscellaneous Capital Expenditures		0	20	143	0	0	0	0
Total Maritime		1,343	1,708	8,217	30,775	29,732	4,043	11,480
Infrastructure Investments for Development Projects								
Building Investments	South Boston	81	525	277	273	1,768	581	1,221
Pier Investments	South Boston, Charlestown	4,000	274	1,837	2,481	3,347	6,956	12,314
Bird Island Flats Infrastructure Investments	East Boston	0	0	95	1,072	4,111	4,181	5,343
Other Development Infrastructure Investment	South Boston	184	655	798	1,542	1,448	654	9,742
Total Development Investments		4,265	1,454	3,007	5,368	10,674	12,372	28,620
Logan Airport								
Airfield	East Boston	8,269	3,094	9,279	7,324	5,713	5,493	1,550
Terminals	East Boston	56,427	2,464	2,596	551	131	1,871	15,544
Buildings	East Boston	7,942	94	205	841	897	79	350
Water, Sewer, and Utilities	East Boston	663	60	903	376	1,241	1,157	4,919
Ground Transportation and Parking	East Boston	0	46	122	175	1,301	377	6,294
Unallocated Completed Facilities	East Boston	0	0	0	0	6,011	0	0
Noise Management	East Boston	88	596	1,326	1,761	1,325	141	3,680
Miscellaneous Expenditures/General Equipment Purchases	East Boston	3,341	325	970	473	913	1,332	8,465
Physical Planning/Environmental Studies	East Boston	0	0	172	768	66	5	690
Bird Is. Fl.Cargo Facilities Investments	East Boston	0	518	565	0	2,342	2,508	7,000
Total Logan Airport Investments		76,730	7,197	2,138	12,269	19,940	12,963	48,492
General Reserves		125	3	7	0	598	56	424
Total Capital Investments by MassPort		83,265	11,392	31,319	54,884	64,053	34,222	95,214

Funding Analysis: ($000s)

1978-83 Approximately 217,000 or 87% was derived from MassPort internal revenues or revenue bonds. The remaining 35,520 or 13% was obtained from government grants.

1984-85 Approximately 81,000 or 85% will come from Massport revenues and revenue bonds. The remaining 14,000 is expected to come from outside grants.

Sources: MassPort response to BRA information request January [illegible] 1984; MassPort Annual Reports 1978-83

MEMORANDUM

TO: Stephen Coyle

FROM: Roy Giarrusso,
Matthew Lynch

DATE: July 8, 1986

SUBJECT: State Immunity from Zoning

The general rule that "a state is immune from municipal zoning regulations, absent statutory provision to the contrary" was established in Teasdale v. Newall & Snowing Constr., 192 Mass. 440 (1906). The Court in Medford v. Marinucci Bros,. 344 Mass. 50, (1962), expanded the general rule to encompass situations where the land is not owned by the state but the state is in the exercise of an essential governmental function.

In 1964, the Court in Village on the Hill, Inc. v. Massachusetts Turnpike Authority, 348 Mass. 107, addressed the question of the ability of an entity or agency created by the Massachusetts Legislature, specifically the Massachusetts Turnpike Authority, to extend this general immunity rule to cover them.

The Court found that the Turnpike Authority, is a "body politic" which is "a public instrumentality performing an essential governmental function" See Massachusetts Turnpike Authority v. Commonwealth, 347 Mass. 524, 527-528 (1964). As a "body politic" the Turnpike Authority is immune from local zoning regulations so long as the Authority is performing its essential "government function." The Court determined the scope of the Turnpike Authority's "government function" to be "actual construction and operation of the turnpike; and action reasonably related to that function." However, in Village on the Hill, Inc. the Court found that the Turnpike Authority's land had become "wholly in excess to the authority's essential turnpike function" thus such land could not remain exempt from zoning provisions.

Since Village on the Hill, Inc., only County Commissioners of Bristol v. Conservation Commission of Dartmouth, 380 Mass. 706 (1980) has directly addressed the issue of state immunity from zoning. County Commissioners of Bristol made the general state immunity rule applicable, as well, to county entities or agencies because counties are "bodies politic and corporate." The Court also held that when a state or county function is explicitly defined by statute then that function is clearly an "essential governmental function" for the purposes of this general rule.

Here the plantiff county commissioners sought to construct a new jail and to acquire the necessary land by purchase or emminent domain. Authority to perform such a function was explicitly provided for in G.L. c. 34 §17, which provides in part that "each county shall provide suitable jails, houses of correction."

Thus in light of County Commissioners of Bristol, so long as the function is provided for in the agency's or entity's enabling statute such functions will constitute an "essential governmental function" for the purposes of the general rule regarding state immunity from zoning.

277 Mass. 199, 204–206; *Commonwealth* v. *Mahoney*, 331 Mass. 510, 513–514.

Questions Nos. 5 and 6.

Chase's prompt 1956 trial was ended by his plea of guilty to second degree murder. Delinquency proceedings in the District Court would have followed promptly if the requirements of G. L. c. 119 had been understood prior to the decision in the *Metcalf* case (see 338 Mass. 648, 653, 656). Chase has not shown that any delay prior to September 14, 1962 (the date of the new indictment, No. 52,496), in trying him for the crime of second degree murder (as distinguished from the delinquency which he has admitted) was the fault of the Commonwealth. Since his prompt arraignment on that new indictment it has been open to him to seek trial on the merits at any time in an effort to establish his innocence of the once admitted offence. His own pretrial motions have been responsible for much of what delay has taken place. At no time has he made an unequivocal demand for trial on the merits of the sort contemplated by G. L. c. 277, § 72. See *Commonwealth* v. *Hanley*, 337 Mass. 384, 387–388. The chain of events shown by this record involves no unconstitutional denial to Chase of a speedy trial for the homicidal conduct which he had admitted by his earlier plea. See the *D'Urbano* case, 345 Mass. 466, 473.

Questions Nos. 10 and 11.

Question No. 10 and question No. 11 (see fn. 2), both reported at the request of Chase's counsel, present no issue of law. See G. L. c. 278, § 30A.

Conclusion.

The case is remanded to the Superior Court for further proceedings consistent with this opinion.

So ordered.

Village on the Hill, Inc. *vs.* Massachusetts Turnpike Authority & another.

Same *vs.* Building Commissioner of Boston.

Suffolk. October 8, 1964. — November 12, 1964.

Present: Wilkins, C.J., Spalding, Whittemore, Cutter, Kirk, Spiegel, & Reardon, JJ.

Massachusetts Turnpike Authority. Eminent Domain, Purpose of taking, Validity of taking, Massachusetts Turnpike Authority. *Constitutional Law,* Public purpose, Eminent domain. *Way,* Incidental to Massachusetts Turnpike. *Zoning,* Public authority. *Mandamus.*

Where it appeared that part of land taken from a landowner by the Massachusetts Turnpike Authority by eminent domain became, in the circumstances, with other land of the Authority, an excess area which the Authority contracted to sell to a private industrial concern displaced from the former site of its plant by the turnpike and on which the concern was permitted by the Authority to erect a new plant before conveyance to the concern, and that part of the land taken was used for relocation, over a reasonable route, of a way in order to furnish necessary access to such excess area from public ways, there was, on the facts, no merit in a contention that the taking was invalid on the ground that, although purportedly made for the purposes of the turnpike, in reality it was made to benefit the concern. [114–115]

Where the State Department of Public Works had approved a relocation of a public way by the Massachusetts Turnpike Authority but not an extension thereof for which the Authority made a taking of land by eminent domain in the name of the municipality, the establishment of the extension as a public way could be perfected either by obtaining approval of it by the Department of Public Works as part of the relocation of the existing public way or by municipal action to lay out the extension, and the taking was not beyond the power of the Authority under St. 1952, c. 354, § 7, as amended by St. 1958, c. 384. [115–117]

Local zoning provisions were applicable to land of the Massachusetts Turnpike Authority which had become an excess area no longer needed in any way for the Authority's functions and which the Authority had contracted to sell to a private concern, even though the conveyance to the concern had not yet been made. [118–119]

In a mandamus case to compel a municipal building commissioner to enforce local zoning provisions as to residentially zoned land on which

an industrial building was erected, a denial of the writ on the erroneous ground that such land was not subject to the local zoning provisions was reversed by this court, but in the circumstances the case was remanded to the trial court for further proceedings, which might include a determination whether the zoning and other aspects of the situation had changed or were likely to change in the near future, and for exercise of discretion as to the time and terms of any relief then appearing to be appropriate. [119–120]

Bill in equity filed in the Superior Court on April 15, 1963.

Petition for a writ of mandamus filed in the Superior Court on May 10, 1963.

The cases were heard by *Brogna, J.*

Joseph B. Abrams (*Joseph Graglia & Robert T. Abrams* with him) for Village on the Hill, Inc.

Lawrence J. Moore, Assistant Corporation Counsel, for the Building Commissioner of Boston.

John L. Murphy, Jr. (*Arthur A. Karp* with him) for Massachusetts Turnpike Authority.

Sumner H. Babcock (*Francis S. Moulton, Jr.,* with him) for Rivett Lathe & Grinder, Inc.

Cutter, J. These two cases grow out of the authority's eminent domain taking of land of the plaintiff (Village) in the Brighton district of Boston in connection with extending the Massachusetts turnpike to Boston. The first case, a bill primarily for declaratory relief, alleges that the takings were illegal and part of a plan by the authority and a defendant in the equity suit, Rivett Lathe & Grinder, Inc. (Rivett), to deprive Village of its property for the benefit of Rivett. The bill also seeks injunctive relief concerning the relocation (on or near Village's property) of a private way known as Newton Street and the construction, in part upon land taken from Village, of a factory building designed for Rivett's use. The second case is a petition by Village for a writ of mandamus to compel the building commissioner of Boston to enforce the Boston zoning law (St. 1924, c. 488, § 18) which at the time of the filing of the petition (May 10, 1963) placed in a general residence dis-

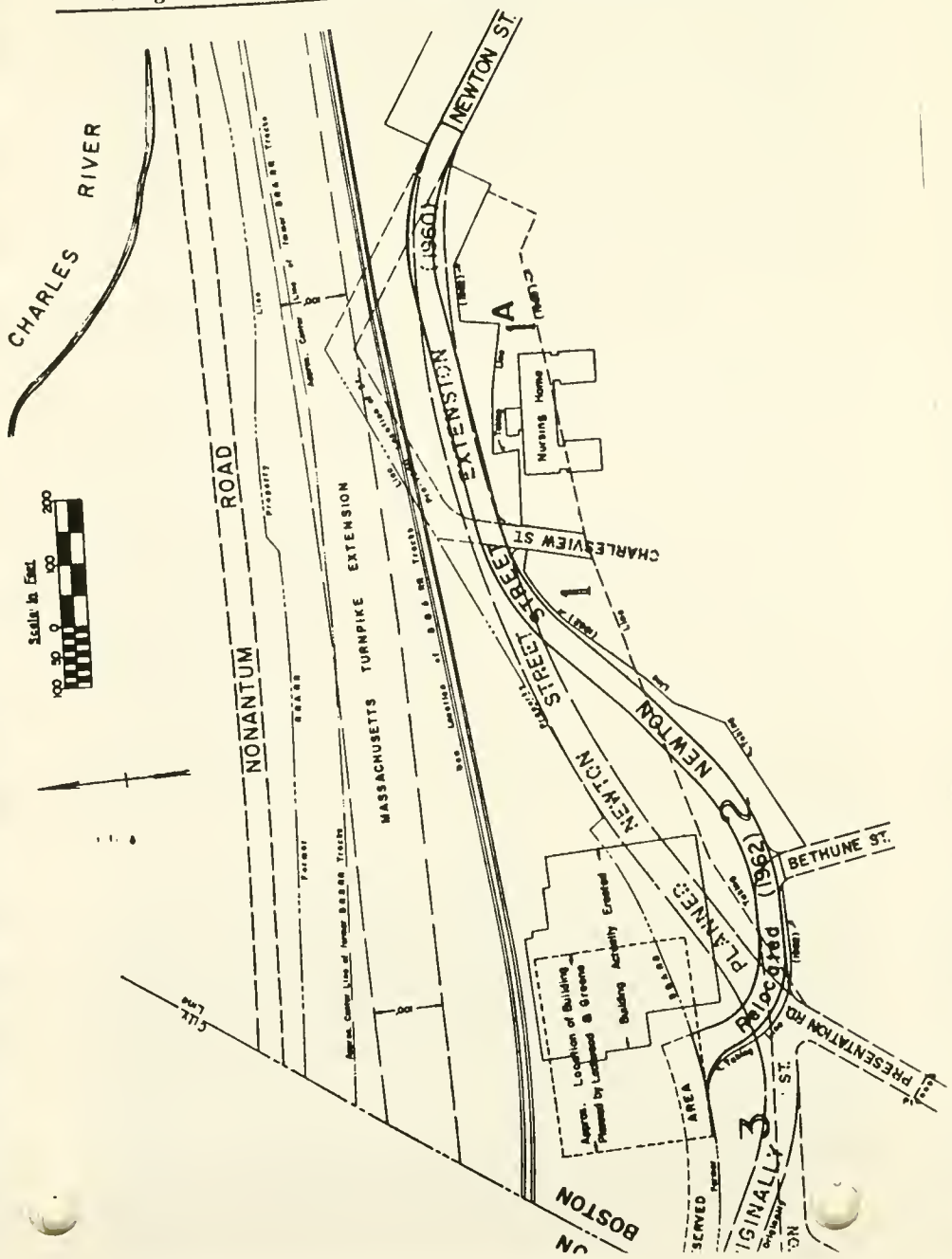
The facts are stated, except as otherwise indicated, up the basis of the trial judge's findings in these cases. In t equity case, Village has appealed from a final decree tl the authority's taking of Village's land "was a taking f a public purpose and not for the private need of Rivett In the mandamus case, Village has appealed from an or that the petition be denied.

The Equity Suit.

Rivett owned a plant at a point somewhat east of the a with which the bill is concerned. In 1957, one Hunt, R ett's president, learned from the authority's chairman t the Rivett plant would probably be taken for the turnp extension. Hunt was advised to "take steps to reloca the plant. In July, 1959, Hunt and his wife bought a pa in Waltham and gave Rivett an option to purchase it at price paid by the Hunts.

There was a delay for some time when plans for sell certain authority bonds were postponed, but in January February, 1961, Hunt ascertained that the turnpike ext sion would go through his plant. In March, 1961, rep sentatives of the authority told Hunt that there would "extra land" in the Faneuil Dump area, near the New Boston boundary, which might be suitable for Rivett's plant. "This area consisted of land owned by the Bos & Albany Railroad which the . . . [a]uthority had a r to purchase." On July 16, 1962, Hunt received a plan f Rivett's engineers (Lockwood and Greene) indicating proposed plant within . . . the Faneuil Dump area viously owned by the . . . [r]ailroad."

At meetings in September, 1962, attended by Hunt representatives of the authority, Rivett's damages for taking of its old plant were determined and Rivett (sul to the approval of its directors) agreed to buy part of dump area for $100,000 "if access and utilities were" a able. Hunt, instead of moving to Waltham or elsewl "preferred to relocate . . . in the Brighton area" w ett's employees lived. Consultations with



surances (apparently designed to retain Rivett's properties, business, and jobs in Boston) concerning 1963, 1964, and 1965 assessments on the land to be purchased and the building to be constructed by Rivett.

The exhibits show that the proposed turnpike extension in this dump area in general followed the then existing line of the Boston & Albany Railroad. This necessitated moving the railroad tracks to the south and away from the Charles River. There would be no access over the tracks to the proposed turnpike from the dump area. Although the record is not very clear on this point, various exhibits strongly indicate that there would have been no access (except over intervening private land) from any public way to so much of the former railroad dump land as was not needed for the relocated railroad or the turnpike, if the authority had not arranged some extension and relocation of private ways and "paper" streets to the south and east of the dump area.

The attached sketch plan shows the principal features of the Faneuil Dump area and its surroundings.[1] Apart from a strip at the northern edge of the plan, the land immediately east of the Newton-Boston boundary and north of the more southerly line marked "Former B. & A.R.R. Property Line" had been owned by the railroad prior to the turnpike construction. There seems to be no doubt that the authority owned, or had the right to acquire, the railroad land, within which the original Lockwood and Greene plan indicated most of Rivett's new plant could be built (see dotted lines on sketch plan showing approximate location). The authority's 1960 plans showed a projected extension of Newton Street (see fn. 1) "through the former [r]ailroad

[1] The sketch plan is a simplification of various exhibits. The portions of Newton Street, Bethune Street, Presentation Road, and Burton Street in the immediate neighborhood of the dump area were shown as private ways on 1960 Land Court plans of Village's land. The trial judge found (apparently, in part, on the basis of a relocation plan approved by the Department of Public Works) that "Newton Street was a public way . . . [coming from the east only] to approximately the point where it joined with Charlesview Street From this point . . . in a westerly direction . . . a pri[illegible]way called Newton Street . . . [led] to the [railroad] property . . . [illegible] . . . was a paper [illegible] never been developed."

property . . . westward into Newton" (see the dotted lines marked "originally planned Newton Street Extension"). In mid-September, 1962, Hunt was told by the authority's chairman "that the proposed relocation of Newton Street would not continue as previously planned to the Newton [c]ity line but would stop somewhere in the Faneuil Dump area and that a reserve[d] . . . [area, marked on the sketch plan] would have to be retained for the future extension of this road into Newton." This change appears to have developed in the manner described in the margin.[2]

This 1962 change in the location of Newton Street to the route marked on the sketch plan, "Relocated (1962) Newton Street Extension," made it "impossible to locate the Rivett . . . plant wholly on former railroad land . . . . The relocation . . . deprived Rivett . . . of some 44,000 square feet of relatively level land," and changed the shape of the lot available for sale. As a consequence, the authority reduced the price to Rivett from $100,000 to $80,000.

A purchase and sale agreement, dated January 17, 1963, described the revised area as including land "between the southerly border of the former Boston & Albany land and the northerly side of relocated Newton Street." See the sketch plan. The agreement, among other things, provided that Rivett "at its own risk and expense, may enter upon the property for . . . construction of its new plant as soon

[2] Under date of June 11, 1962, engineers acting for the authority instructed another engineering firm, DeLeuw, Cather & Co., to make studies and submit "recommendations as to a revised location" of Newton Street. The DeLeuw firm was told that "the portion of Newton Street in Newton will not be constructed," and that it had been suggested "in order to avoid the possibility of affecting . . . [a] nursing home" (see lower right part of sketch plan) that Newton Street be constructed further to the north than had previously been proposed. On July 26, 1962, this firm brought forward a "plan in which the Newton Street extension was made to swing in a southerly direction," which would necessitate taking some of Village's land. The evidence (including a contour plan) indicates (1) that the elevation of the proposed relocation of Newton Street at its junction with Charlesview Street was about eighty-five feet, and (2) that near where the 1960 planned extension of Newton Street approached the former railroad land the elevation was around thirty-five to forty feet. The distance between the railroad land and the intersection of Newton Street and Charlesview Street (scaled from a map in evidence) is about 480 feet. The 1960 route would thus have dropped a forty-five to fifty feet in 500 feet, a ten percent grade or a little less. The 1962 route made approximately the same descent in 1,040 feet, an average

as the [a]uthority obtains title to . . . premises . . . not then owned by" it.

On October 18, 1962, the authority took some of Village's land. This land lay (see sketch plan)[3] largely south and east of the former railroad land. The order recited, among other things, that the taking was for the turnpike extension and "for the purpose of relocating and constructing a portion of a private way (Newton Street)." Village's land was taken (as the evidence shows, in January, 1963) for "the [c]ity of Boston and the [c]ity approved the location of Newton Street extended and the plans for the utilities therein." The Department of Public Works "approved the relocation of that part of old Newton St[reet] which was a public way but has never been requested to approve the relocation . . . of that part . . . which was a private way."

Prior to the date of the judge's findings (September 4, 1963) there had been no conveyance from the authority to Rivett. Legal title to the premises, including the building being constructed there by Rivett, remained in the authority. The judge found, however, that it was "the present intention of the parties to . . . fulfill the terms of the purchase and sale agreement." Rivett started site clearing on November 14, 1962, and at the time of the trial (in late June, 1963) construction of the building was nearly completed.[4]

With respect to the relocation of Newton Street, west of Charlesview Street, the judge made findings. "When Newton Street was relocated farther north[5] to avoid the nursing

[3] All of the area taken except the area marked "2" would have been taken under the 1960 plan. The areas marked "1," "1A," and "3" would apparently have been taken under the 1960 plan, but were not taken in 1962.

[4] Rivett had agreed that it would be out of its old plant within six months after construction started on the new plant. Because of the need for speed the use of prefabricated materials was investigated and Rivett signed a construction contract on January 2, 1963. Rivett's contractor applied for a building permit in Rivett's name, because "not aware of the legal niceties of the situation in which title had not yet passed to Rivett."

[5] The evidence does not show that, near the nursing [illegible] east of Charlesview Street, Newton Street (as distinguished from the taking line, see sketch plan) was in 1962 moved north from its 1960 planned location. There was eviden

home, the grade of Newton Street up to its connection with Charlesview Street was increased so that its high point was at" that connection. "Once this was done, from an engineering standpoint, it was also necessary to bring the Newton Street extension toward Presentation Road in order to avoid excessive fill and excessive grade down" from the high land (see fn. 2) near Charlesview Street "into the former railroad property and also to provide for a more level connection with Presentation Road and Tilton Street, when and if they are extended to meet Newton Street as relocated."

The judge reached the following principal conclusions: (1) The DeLeuw firm (see fn. 2) acted in good faith and in accordance with sound engineering principles in relocating Newton Street and not in an attempt to assist Rivett. (2) The "[a]uthority did not take . . . [Village's] land for the purpose of sale or lease . . . to Rivett . . . [or] under the guise of public need with a design of depriving . . . [Village] of its property for the private need of Rivett."

1. The case was heard upon evidence consisting of numerous exhibits and voluminous oral testimony. The ultimate conclusions of fact of the trial judge are supported by his subsidiary findings and are not shown by the reported evidence to be plainly wrong in any material respect. See *Spiegel* v. *Beacon Participations, Inc.* 297 Mass. 398, 407–408; *Lima* v. *Avery,* 343 Mass. 179, 180. The judge was justified by the evidence in finding that the relatively minor

however, that this part of Newton Street was raised in elevation so that "less space for slopes" was required; and that in 1960, when this area was vacant land, the "plans were laid out on the basis of no [retaining] walls" while the "1962 plans . . . [provided] bin-type retaining walls to avoid the taking of new buildings." Apparently these engineering adjustments permitted less of a cut into the hill and thus avoided damage to the nursing home (under construction in 1962). The trial judge's reference to moving Newton Street north in this area probably is to the change in the taking line. His discussion of the 1962 action east of Charlesview Street appears immaterial because the crucial factors in relocating Newton Street west of Charlesview Street were the elevations (see fn. 2) of the planned intersection of these streets (not changed between 1960 and 1962) and the former railroad land. The evi[illegible] (engineers' testimony and exhibits) about the topography of the area we[illegible] [illegible] justifies the significant finding in effect that, to

1962 adjustments of the authority's original plans (which had been made as early as 1960) for relocating and extending Newton Street, were based upon sound engineering judgment rather than upon the desire to help Rivett.

The authority had ample power to make reasonable provision for access to the Faneuil Dump land which otherwise would have no direct access to highways after the turnpike construction. See *Luke* v. *Massachusetts Turnpike Authy.* 337 Mass. 304, 306, 309–310. When the dump area was merely vacant land used in connection with the railroad, it probably needed no greater possibility of access than was afforded by the private, unconstructed portion of Newton Street. After the dump land was acquired by the authority, was reduced in size by the turnpike and relocated rails, and became in part excess to the authority's needs, it was appropriate for the authority (see St. 1952, c. 354, §§ 5 [j], 7) to sell that excess land. Before doing so, it was reasonable for the authority to provide that substantial excess parcel with highway access over a substitute for the originally planned (but unsuitable) 1960 extension of Newton Street. See *Wright* v. *Mayor & City Council of Cambridge,* 238 Mass. 439, 440–441. It was within the power of the authority to take this action as a proper "by-product" of the public purpose involved in the construction of the turnpike extension. See the *Luke* case, 337 Mass. 304, 309. See also *Robie* v. *Massachusetts Turnpike Authy.* 347 Mass. 715, 725–729.

2. It is argued that the authority had no power under St. 1952, c. 354, § 7 (as amended by St. 1958, c. 384)[6] to take land in the name of the city unless it did so in order to relo-

[6] Statute 1952, c. 354, § 7 (as amended by St. 1958, c. 384), provides in part: "If the [a]uthority shall find it necessary to change the location of any portion of *any public highway,* it shall reconstruct the same at such location as the [a]uthority shall deem most favorable, with the approval of the state department of public works, and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the [a]uthority as a part of t[illegible]ost of the turnpike. In exercising the power herein granted, the [a]ut[illegible] may take private property *in the name of a city or town* by exercise o[illegible]e power of emi-
[illegible] (emphasis supplied)

cate a public way. In a sense the whole relocation and extension of Newton Street may be viewed as a relocation of the former public way known as Newton Street east of Charlesview Street. If this was the theory on which the authority made the taking, it should have obtained at some time the approval of the whole relocation by the State Department of Public Works, although nothing in § 7 makes such approval a condition precedent to the validity of the taking.[7] If obtaining such approval has been omitted by inadvertence, it may be accomplished now.

The old "paper" Newton Street west of Charlesview Street, however, was a private way where it abutted on Village's land. The authority may well have proceeded on the basis that it was only relocating a private way. On this view of the facts, the department's approval was not required, for § 7 does not in express terms require such approval of the relocation of a private way. The question remains, nevertheless, whether the taking in such a case could be made in the name of the city.

The authority had broad authority, under principles discussed above and in the *Luke* case, 337 Mass. 304, 309–310, to take property in its own name to provide access to the Faneuil Dump area. See St. 1952, c. 354, § 5 (j), (k), (p). After such a taking, the authority, as a reasonable method of providing such access, could have transferred the westerly part of Newton Street to the city so that it could take action to lay it out as a public way (see St. 1906, c. 393, §§ 1, 2, as amended respectively through Sp. St. 1917, c. 318, and St. 1957, c. 20). What the authority has in effect done is to do in one step, by a taking in the name of the city, what it could have done by a taking in its own name followed by other action.

Where the taking of the western end of the street was so closely related to the duly approved relocation of the former public portion of Newton Street, we hold that it was authorized by § 7. The creation of the extension of Newton Street as a public way may now be perfected either by obtaining the department's approval of the whole relocation or by city action to lay out the western end of the street as a public way.

[7] We see no reason why the authority may not proceed reasonably with its eminent domain program, once it has obtained approval by the Department of Public Works of the general turnpike route, without settling the details of each appropriate relocation of local public ways, private ways, and rights of access. See St. 1952, c. 354, § 1, as amended through St. 1955, c. 47; *Rogers v. Massachusetts Turnpike Authy.* 347 Mass. 715, 719–721.

Decree affirmed.

THE MANDAMUS CASE.

In the mandamus case, the building commissioner admitted in his answer, among other things, (1) that Village prior to November 7, 1962 (the date of recording the takings), owned land in the vicinity of Newton Street, a substantial part of which was taken, and (2) that on November 9, 1962, Rivett applied for a building permit, which was issued to Rivett on December 28, 1962. The trial judge made findings which incorporated the findings in the equity case "by reference insofar as they may be relevant to . . . [the] petition for mandamus." He also found (1) that the authority owned (at the time of the findings, September 4, 1963) "the land upon which the building is being constructed by Rivett"; (2) that the time for performance under the purchase and sale agreement between Rivett and the authority "has passed and has not been extended"; (3) that "although the expressed intention of the parties is to carry out the . . . agreement . . . legal title . . . has not yet passed from the . . . [a]uthority; and (4) that "a substantial portion of [the] land upon which a manufacturing building is being built by Rivett . . . is in a [g]eneral [r]esidence [d]istrict (R40), under the . . . zoning regulations of . . . Boston and that the erection of a manufacturing building is prohibited in such a . . . [d]istrict." The judge went on to say, "I cannot find as a fact that title will pass out of the . . . [a]uthority. I cannot overlook the possibility that some condition (such as inability to pay for land) may crop up . . . and that therefore title may never pass from the . . . [a]uthority." He ruled that the property "owned by the . . . [a]uthority is not subject to the zoning regulation of . . . Boston."

Statute 1952, c. 354, § 3, created the authority. It provides that it "shall not be subject to the supervision and regulation of the department of public works or of any other department . . . or agency of the commonwealth except to the extent and in the manner provided in this act. The [a]uthority is hereby constituted a public instrumentality, and the exercise by the [a]uthority of the powers conferred by this act in the construction, operation and maintenance of the turnpike shall be deemed . . . to be the performance of an essential governmental function." The nature of the authority has been recently discussed. See *Massachusetts Turnpike Authy.* v. *Commonwealth,* 347 Mass. 524, 527–528; *Gardner* v. *Massachusetts Turnpike Authy.* 347 Mass. 552, 556, 562. The Boston zoning statute (see St. 1924, c. 488, § 22, as amended by St. 1928, c. 70) does not "apply to buildings or land belonging to and occupied by the . . . commonwealth." Although the property held by the authority is eventually to belong to the Commonwealth (see St. 1952, c. 354, § 17), it is not now owned by the Commonwealth. Nevertheless, the Legislature, by St. 1952, c. 354, as amended, made the authority sufficiently governmental in character so that the actual construction and operation of the turnpike, its essential "government function," and action reasonably related to that function, should not be prevented by a zoning statute applicable to one municipality or by a local zoning ordinance or by-law. See, e.g. c. 354, §§ 1, 5 (j).

That the turnpike operations of the authority are exempt from local zoning provisions does not mean that local zoning provisions are not applicable to land owned by the authority which has become wholly excess to the authority's essential turnpike function. We would be slow to conclude that the Legislature intended any such extraordinary result. See *Massachusetts Turnpike Authy.* v. *Commonwealth,* 347 Mass. 524, 527–528. Certainly, after the authority has conveyed in fee to private persons excess land formerly owned by it, such land does not remain exempt from zoning provisions because once owned by the authority.

Upon the facts found by the judge, it seems clear that the authority had no longer, for its turnpike operations, any remaining need whatsoever for, or interest in, the area which it had agreed to sell to Rivett. After the contract of purchase and sale had been made, the building commissioner should properly have denied Rivett's application when it requested a permit to erect a building for its own private uses in violation of the zoning statute. See *Smith* v. *Zoning Bd. of Appeals of Scituate,* 347 Mass. 755, 759. The trial judge, subject only to the considerations mentioned below, should have ordered that the commissioner enforce the zoning provisions.

Mandamus is in some degree a discretionary remedy. *Massachusetts Soc. of Graduate Physical Therapists, Inc.* v. *Board of Registration in Medicine,* 330 Mass. 601, 605–606. See *Nichols* v. *Dacey,* 329 Mass. 598, 600; *MacNeil* v. *Superior Court,* 339 Mass. 774. The trial judge, in determining whether to grant immediate relief, was properly entitled to take into account the situation existing at the time of the trial. The turnpike extension had not been completed. When completed, it might well turn out to affect materially the character of the neighborhood. Most of the land north of the relocated Newton Street, near the Faneuil Dump area, was zoned for industrial use. Only a small segment was in a residential zone. The judge, as matter of discretion, might properly have delayed relief by mandamus for a reasonable time (see *Nickols* v. *Commissioners of Middlesex County,* 341 Mass. 13, 26–27, and analogy of *Chesarone* v. *Pinewood Builders, Inc.* 345 Mass. 236, 242–243) sufficient to permit application for a change in zoning or for a variance, or for other proper reasons in the interest of justice.[8]

[8] It was suggested at the arguments that there had been changes of the zoning of the portion of the dump area which were in a residential area at the time of the trial. The record reveals nothing about this, and thus we do not now consider whether any such change, or a variance, would have been proper in view of the changes in the dump area caused by the turnpike extension, the moving of the railroad tracks, the relocation and extension of Newton Street, and related matters. Any changes of zoning, of course, may be shown in the Superior Court in the further proceedings now ordered and may affect the judgment there to be entered.

Apart from such an exercise of discretion, relief should have been granted.

The order for judgment is reversed. The case is remanded to the Superior Court for further proceedings consistent with this opinion, which may include, among other things, (1) taking further evidence to determine whether the zoning and other aspects of the situation have changed or are likely to change in the near future, and (2) the exercise of reasonable discretion as to the time and terms of whatever relief may then appear to be appropriate.

So ordered.

BOARD OF SELECTMEN OF PEMBROKE & another[1] *vs.* R. & P. REALTY CORP.

Plymouth. October 6, 1964. — November 24, 1964.

Present: WILKINS, C.J., SPALDING, WHITTEMORE, CUTTER, KIRK, SPIEGEL, & REARDON, JJ.

Subdivision Control. Zoning, Material removal. *Bona Fide Purchaser.*

Under G. L. c. 41, § 81U, as amended through St. 1958, c. 377, § 1, there was not "final action regarding" a definitive subdivision plan within sixty days after its submission to a town's planning board where the board approved the plan subject to certain conditions within the sixty days but did not file a certificate of its action with the town clerk until after the expiration of the sixty days, and it must be deemed that the plan was approved without conditions upon the expiration thereof. [122, 127]

A certificate by a town clerk in 1958, reciting that a definitive subdivision plan was submitted to the planning board of the town on September 15, that "no notice of final action" by the planning board under G.L. c. 41, § 81U, was filed in the town clerk's office before November 18, that he "received no notice of appeal [under § 81BB] in connection therewith before" December 9, and that "the approval resulting from such failure has become final," was adequate to comply with § 81V. [123, 127]

Where a town's planning board approved with conditions a definitive subdivision plan within sixty days after its submission but did not file a certificate of the decision with the town clerk until after the expiration of the sixty days, and an appeal to the Superior Court in equity under G. L. c. 41, § 81BB, was taken from the "recorded" decision within twenty days after the filing of the certificate but more than twenty days after the expiration of the sixty days, a decree purporting to annul the decision did not affect the constructive unconditional approval of the plan resulting under G. L. c. 41, § 81U, as amended through St. 1958, c. 377, § 1, from the planning board's failure "to take final action regarding" the plan within the sixty days. [127]

A definitive subdivision plan constructively approved by a town's planning board under G. L. c. 41, § 81U, as amended through St. 1958, c. 377, § 1, by the board's failure "to take final action regarding" the plan within sixty days after its submission was a plan "approved by" the planning board within a section of the town's zoning by-law dealing with material removal and providing that nothing in that section should prohibit removal of material "from any way designated on a plan . . . approved by" the board. [121–122, 128]

After a definitive subdivision plan had been constructively approved without conditions under G. L. c. 41, § 81U, as amended through St. 1958, c. 377, § 1, by reason of the planning board's failure to complete final action thereon seasonably, although the board intended and purported to approve the plan subject to certain conditions, one who bought the land in question with knowledge of the board's intent respecting conditions would not be entitled to the protection afforded to a bona fide purchaser by § 81W against subsequent action by the board under § 81W to "modify, amend or rescind" the constructive unconditional approval of the plan. [128–129]

BILL IN EQUITY filed in the Superior Court on June 28, 1962.

The suit was heard by *Dewing,* J.

The case was submitted on briefs.

James A. Shannon & Eugene L. Tougas for the defendant.

Joseph F. McGaffigan, Town Counsel, for the plaintiffs.

WHITTEMORE, J. The board of selectmen of Pembroke, having the power to enforce the zoning by-law of the town, sought in the Superior Court declaratory relief and an injunction to bar the removal of sand and gravel from land of R. & P. Realty Corp. The case was submitted on a statement of agreed facts. The final decree from which the defendant has appealed granted declaratory and injunctive relief in accordance with findings and rulings of the judge.

The zoning by-law in § 5A provides: "Sod, Sand, Gravel, Loam and Stone Removal shall be permitted in any area only after a permit has been granted by the Board of Select-

[1] The planning board became a party plaintiff by intervention when the amended bill and the defendant's answer were filed.

County Commissioners of Bristol *vs.* Conservation Commission of Dartmouth & another.

Bristol. March 4, 1980. — May 21, 1980.

Present: Hennessey, C.J., Quirico, Braucher, Kaplan, & Wilkins, JJ.

Zoning, Public authority, Land held by county. *Municipal Corporations*, By-laws and ordinances, Home Rule Amendment. *County*, Municipal zoning by-laws.

Land on which county commissioners sought to have a new jail constructed, and any structures to be erected thereon, were not subject to a municipal zoning by-law. [708] Wilkins, J., dissenting.

Civil action commenced in the Superior Court on January 4, 1979.

The case was heard by *Garrity*, J.

After review was sought in the Appeals Court, the Supreme Judicial Court, on its own initiative, ordered direct appellate review.

James M. Cronin (*Leonard E. Perry* with him) for the defendants.

William F. Long, Jr., for the plaintiffs.

Hennessey, C.J. In 1973 the Legislature authorized the county commissioners of Bristol County to construct a new jail and to acquire the necessary land by purchase or eminent domain. See St. 1973, c. 412.[1] As a result of this legislative mandate and after appropriate study and investigation, the county commissioners devised a plan to build the jail within the confines of the town of Dartmouth in an area of the town zoned for limited industrial use.[2] The county commissioners applied, in compliance with the requirements of G. L. c. 131, § 40, to the conservation commission of the town of Dartmouth for a determination of what conditions, if any, were to be applied to the construction of the proposed new jail in order to respond to specified environmental considerations. The conservation commission determined that the proposed site fell within the scope of G. L. c. 131, § 40, and that the county commissioners were therefore required to file with the conservation commission a notice of intent to engage in construction activity on the land.

The notice of intent was submitted in the recommended form, including complete environmental data along with the $25 filing fee. General Laws c. 131, § 40, as amended provides that "[n]o such notice shall be sent before all . . .

[1] Statute 1973, c. 412, provides in relevant part the following: "Section 1. For the purpose of constructing a new jail, house of correction and sheriff's quarters in Bristol County, the county commissioners of said county may erect on land acquired for such purpose, a suitable building or buildings, and may originally equip and furnish the same.

"Section 2. For the purposes of section one, the county commissioners of Bristol county may take by eminent domain, after a public hearing, or acquire by purchase or otherwise any land and buildings that may be necessary for said purpose."

[2] The proposed locus is within a district covered by § 5C of the Dartmouth zoning by-law which reads as follows: "SECTION 5C. LIMITED INDUSTRIAL DISTRICTS. Within any Limited Industrial District, as indicated on the Zoning Map, no building or premises shall be used and no building or structure shall be erected which is intended or designed to be used, in whole or in part, for other than one or more of the following specified purposes . . ..

(1) Wholesale warehouse, including office and showroom facility.

(2) Light industrial uses, including manufacturing, storage, processing, fabrication, packaging, assembly, printing or reproduction, research, experimentation and testing.

(3) Store or service establishment for retail or wholesale trade display or service of products manufactured on the same site or at other sites of the same company or corporation. Such store or service establishment shall be clearly incidental to the primary industrial use.

. . .

(4) Commercial kennel or hobby kennel, subject to the following conditions:

(a) That the Board determine that such use is not injurious to the district.

(b) That the lot on which the kennel is to be maintained have a minimum area of one acre.

(c) That the Board may impose other conditions it deems appropriate."

variances . . . required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application for said . . . variances . . . ." The conservation commission notified the county commissioners that their notice could not be accepted until an application had been made for a zoning variance from the Dartmouth zoning board of appeals.

The plaintiff county commissioners of Bristol then filed this action seeking a declaratory judgment that the proposed county use gave the land in question immunity from the Dartmouth zoning by-law. After a hearing, the Superior Court issued a declaratory judgment that the land and any structures to be erected thereon by the county are not subject to the municipal zoning by-law of the town of Dartmouth. The defendant conservation commission of Dartmouth filed a motion to alter or amend judgment under Mass. R. Civ. P. 59, 365 Mass. 827 (1974), claiming that a presumption of county immunity from municipal zoning asserted as the basis of decision contravened the Home Rule Amendment.[3] The Superior Court denied this motion without a hearing. The defendants appealed.

There is no error. We therefore sustain the order, ruling and judgment of the Superior Court that the land in Dartmouth in which the plaintiff county commissioners seek to have a new jail constructed, and any structures to be erected thereon, are not subject to the municipal zoning by-law of the town of Dartmouth.

The general rule in this and other jurisdictions is that "a State is immune from municipal zoning regulations, absent statutory provision to the contrary." *Medford* v. *Marinucci Bros.*, 344 Mass. 50, 56 (1962), and cases cited. This rule has its origins in *Teasdale* v. *Newell & Snowling Constr. Co.*, 192 Mass. 440 (1906). In that case the metropolitan

[3] Article 2 of the Articles of Amendment of the Massachusetts Constitution appearing in art. 89 of the Articles of Amendment.

park commissioners had made a contract with the defendant contractor for grading and other work on land in Quincy which they had taken for park purposes. The commissioners authorized the defendant to build a temporary stable on the property to accommodate the large number of horses used in the project. The health laws of the municipality prohibited such a stable. We held the health laws inapplicable under the circumstances, reasoning that a "general law made for the regulation of citizens must be held subordinate to this special statute regulating the use of the property of the State unless there is express provision to the contrary. It is not to be presumed that the Legislature intended to give to the local licensing board the authority to thwart the reasonably necessary efforts of the park commissioners to perform their duty as agents of the State." *Id.* at 443.

The same reasoning which was applied to exempt the metropolitan park commissioners from the Quincy health laws in *Teasdale* was applied to exempt the commissioners of public works from a Medford zoning ordinance in *Medford* v. *Marinucci Bros.*, 344 Mass. 50 (1962). In that case, the Department of Public Works had made a contract with the defendant contractor for building a section of an interstate highway. The defendant received permission from the chief engineer of the Department of Public Works to construct a railroad loading area at a particular location in the city of Medford which was zoned for single residences. The city sued to enjoin this use of the land under the authority of its zoning ordinance. In ruling against the city we stated that "[w]e cannot conclude that by enacting the Zoning Enabling Act the Legislature intended to authorize a municipality to thwart the Commonwealth in carrying out the functions of government." *Id.* at 57.

We reached the same conclusion in *Village on the Hill, Inc.* v. *Massachusetts Turnpike Auth.*, 348 Mass. 107 (1964). In that case the Massachusetts Turnpike Authority had taken land by eminent domain from a private corporation, Rivett Lathe & Grinder, Inc. (Rivett), in connection with extending the Massachusetts Turnpike. The authority

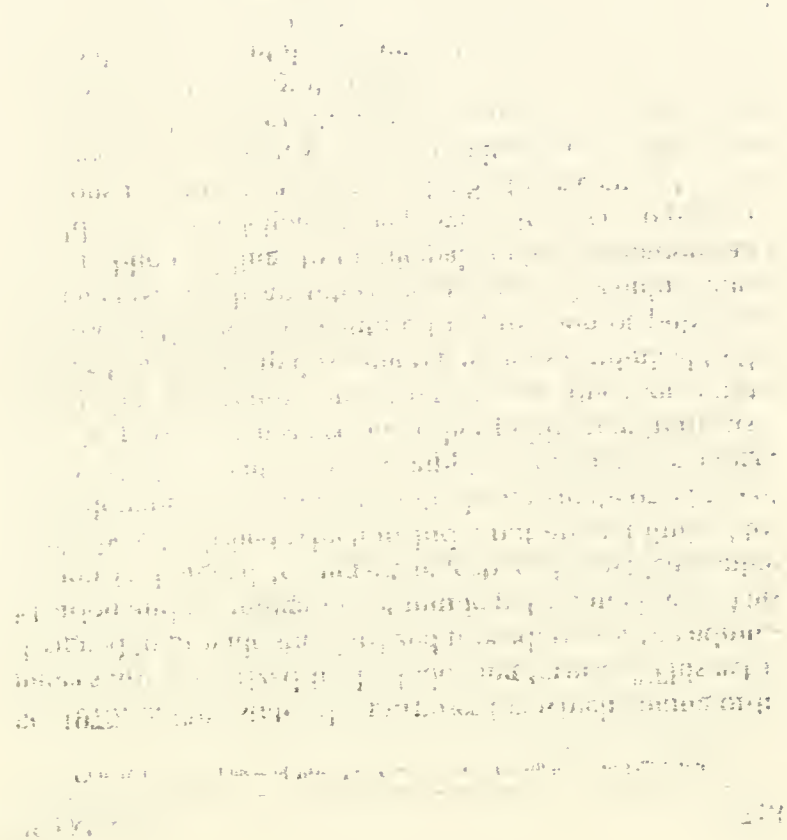
then agreed to sell to Rivett another lot on which Rivett could relocate its plant. In accordance with its purchase and sale agreement with the authority, Rivett entered the property and began construction of its new plant before title had been conveyed from the authority to Rivett. The plaintiff petitioned for a writ of mandamus to compel the building commissioner of Boston to enforce the Boston zoning law, which placed part of the land upon which the factory building was being constructed in a general residence district.

At the time of the trial legal title to the premises, including the building being constructed there by Rivett, remained in the authority. In concluding that this property was not subject to the Boston zoning regulation we reasoned as follows: "Although the property held by the authority is eventually to belong to the Commonwealth (see St. 1952, c. 354, § 17), it is not now owned by the Commonwealth. Nevertheless, the Legislature . . . made the authority sufficiently governmental in character so that the actual construction and operation of the turnpike, its essential 'government function,' and action reasonably related to that function, should not be prevented by a zoning statute applicable to one municipality or by a local zoning ordinance or by-law." *Village on the Hill, Inc.* v. *Massachusetts Turnpike Auth.*, *supra* at 118.

As these cases demonstrate, an entity or agency created by the Massachusetts Legislature is immune from municipal zoning regulations (absent statutory provision to the contrary) at least in so far as that entity or agency is performing an essential governmental function.[4] It is clear that a county stands in the same position as the other legislatively created entities discussed above for purposes of applying this rule. Like the Massachusetts Turnpike Authority, which we described in *Massachusetts Turnpike Auth.* v. *Commonwealth*, 347 Mass. 524, 525 (1964), as "a body politic and corporate . . . and . . . a public instrumentality performing an essential governmental function," counties also are "organized by the General Court for the convenient administration of some parts of government. They are bodies politic and corporate. They exist solely for the public welfare." *County of Middlesex* v. *Waltham*, 278 Mass. 514, 516 (1932). "They may be changed at the will of the Legislature, and the character and extent of the sovereign powers to be exercised through them are subject to modification in like manner, according to legislative judgment of the requirement of the interests of the public."[5] *Boston* v. *Chelsea*, 212 Mass. 127, 129 (1912). See also G. L. c. 34, § 1. What the plaintiff county commissioners seek to accomplish here is clearly the execution of an essential governmental function. General Laws c. 34, § 3, as amended through St. 1978, c. 478, § 17, provides in part specifically that "[e]ach county shall provide suitable jails, houses of correction, fireproof offices and other public buildings necessary for its use." Therefore, our reading of Massachusetts case law leads to the conclusion that the Dartmouth zoning by-law is inapplicable in this circumstance.

[4] The Attorney General addressed a question similar to the one at bar in Rep. A.G., nub. Doc. No. 12, 197, 198 (1967), in which an airport commission, a creature of the State Legislature, was refused a zoning exemption by a municipality to build an airport facility. The Attorney General wrote as follows: "It is well settled that local zoning by-laws do not apply to the Commonwealth, or instrumentalities of the Commonwealth, when acting in pursuance of a public function on land of the Commonwealth. *Teasdale* v. *Newell & Snowling Construction Co.*, 192 Mass. 440 [1906]." "*Medford* v. *Marinucci Bros.*, 344 Mass. 50 [1962], the most recent case on this point, held that a highway contractor was not required to comply with local zoning by-laws in carrying out a construction contract for a state highway, even though his contract required him to comply with local by-laws. This principle is not confined to instances where the land is directly owned by the Commonwealth, but extends to instrumentalities of the state when engaged in their public function unless the Legislature has indicated a different intention."

[5] A variant of this general principle has been applied to counties in *County of Middlesex* v. *Waltham*, 278 Mass. 514, 516 (1932), wherein we ruled that "[l]and held by counties actually devoted, or designed to be devoted within a reasonable time, to public uses is exempt from taxation [by the town in which it is situated] *unless there is special statutory provision to the contrary*" (emphasis supplied).



The defendant nevertheless argues that a proper reading of the pertinent sections of The Zoning Act (G. L. c. 40A) leads to the contrary conclusion. The defendant directs us to § 3 of G. L. c. 40A (inserted by St. 1975, c. 808, and amended by St. 1977, c. 860) which provides in part that, "[n]o zoning ordinance or by-law shall . . . prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements . . . ." The defendant argues that § 3's explicit exemption for land or structures used for religious or educational purposes, and the absence of any such exemption for other essential governmental purposes, indicates an intent that land or structures devoted to such other purposes should not be exempt from municipal zoning regulation.

We do not agree with the defendant's proffered interpretation.[6] The defendant has failed to read the statute as a whole and to interpret § 3 in light of the statutory purposes. See *Massachusetts Comm'n Against Discrimination* v. *Liberty Mut. Ins. Co.*, 371 Mass. 186, 190 (1976); *Commonwealth* v. *Woods Hole, Martha's Vineyard & Nantucket S.S. Auth.*, 352 Mass. 617, 618 (1967). Section 2A of

[6] The defendant relies in making this argument on the familiar doctrine of statutory interpretation that express reference in a statute to one matter excludes by implication other similar matters not mentioned. While this doctrine can be of help in certain situations, see *General Elec. Co.* v. *Commonwealth*, 329 Mass. 661, 664 (1953), we do not apply it blindly when the results would be illogical or contrary to sound precedent. For example, in *Medford* v. *Marinucci Bros.*, 344 Mass. 50, 56 (1962), we held that the absence of any language in the old Zoning Enabling Act exempting property owned by the Commonwealth from municipal zoning could not be construed as indicating a legislative intent that the act apply to [illegible] land.

St. 1975, c. 808, states the purposes for which zoning ordinances are authorized in the following terms. "This act is designed to provide standardized procedures for the administration and promulgation of municipal zoning laws. This section is designed to suggest objectives for which zoning might be established which include, but are not limited to, the following: — . . . to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements." To say that § 3 exempts only religious and educational institutions from municipal zoning regulations is inimical to the purpose of the act to facilitate the provision of public requirements. Such an interpretation of § 3 would subject most public buildings to municipal zoning regulations and would give a municipality the power effectively to preempt the construction of facilities at the State or county level.

Properly construed, § 3 does not allow municipal zoning regulation of land or structures owned or leased by the Commonwealth or by its bodies politic and devoted to an essential governmental function. Instead, § 3 merely permits formerly exempt land or structures devoted to religious or educational purposes to be subjected to reasonable municipal zoning dimensional, but not use, requirements.

Our interpretation of § 3 is bolstered by the fact that when the Legislature has intended to confer a "municipal veto" upon action taken by an entity or agency performing an essential governmental function it has done so in unmistakable terms. See *Medford* v. *Marinucci Bros.*, 344 Mass. 50, 56 (1962). This legislative practice is clearly exemplified by G. L. c. 34, § 25, as amended through St. 1977, c. 350, which authorized county commissioners to acquire "such real property within their respective counties as may be necessary to maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces, and may control and manage the same; *provided that such acquisition has been approved* by the department of environmental management and the conservation committee of the city or town within which the land [illegible] or if

such city or town has no conservation committee, by a two thirds vote of the city council in the case of a city and by a two thirds vote of the board of selectmen in the case of a town . . ." (emphasis supplied). By contrast, such terms conferring priority on municipalities over the proposed actions of the plaintiff county commissioners appear neither in § 3 of G. L. c. 40A nor in St. 1973, c. 412.

The defendant argues finally that the result reached by the Superior Court is contrary to the spirit and letter of art. 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89 of the Amendments (Home Rule Amendment). The Home Rule Amendment has provided a direct constitutional grant of certain powers to municipalities. This grant of power is embodied in § 6 of art. 2 which reads, in part, as follows: "Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight . . . ." Section eight reads in pertinent part as follows: "The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters."

Under the terms of § 6, a municipal by-law is valid in so far as it is not inconsistent with the laws enacted by the Legislature in conformity with its reserved powers. "In determining whether a local ordinance or by-law is 'not inconsistent' with any general law within the meaning of those words in § 6 of the Home Rule Amendment . . . the same process of ascertaining legislative intent must be performed as has been performed in the Federal preemption cases and in our own cases involving 'inconsistent' . . . local ordinances or by-laws. . . . If the Legislature has made no explicit indication of its intention in this respect, a legislative intention to bar local ordinances and by-laws purporting to exercise a power or function on the same subject as State legislation may nevertheless be inferred in all the circumstances. . . . If the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject, the local ordinance or by-law is not inconsistent with the State legislation . . . ." *Bloom* v. *Worcester*, 363 Mass. 136, 155-156 (1973).

The purpose of St. 1973, c. 412,[7] is clear on its face — to empower the commissioners of Bristol County to construct a jail, house of correction and sheriff's quarters within the county and to acquire *any land and buildings that may be necessary* for this construction. The municipal ordinance of the town of Dartmouth is therefore inconsistent with St. 1973, c. 412, in so far as it impedes the county commissioners from performing their statutory task of selecting the jail site, acquiring the land and erecting the required structures.

The only question which remains under the Home Rule Amendment is whether St. 1973, c. 412, conforms with the precepts of § 8. Several of our recent cases have clarified the requirements of this section. For example, in *Del Duca*

[7] For the text of this statute see note 1, *supra*.

v. *Town Adm'r of Methuen*, 368 Mass. 1 (1975), a municipality had established a planning board in conformity with G. L. c. 41, § 81A.[8] The municipality later adopted a home rule charter creating a town council which adopted an ordinance creating a new planning board with a partially different membership. In rejecting the contention that the town had been granted the power to do this by § 6 of the Home Rule Amendment, we reasoned as follows: "The powers reserved to the general court by § 8 include 'the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two.' . . . It is plain that G. L. c. 41, § 81A, is a general law that in its mandatory aspect applies alike to a class of not fewer than two cities (all cities except Boston) and alike to a class of not fewer than two towns (all towns having populations of 10,000 or more). Thus, there can be no question that G. L. c. 41, § 81A, remains effective as to both of those classes, notwithstanding the Home Rule Amendment" (citations omitted). *Del Duca* v. *Town Adm'r of Methuen*, *supra* at 8-9. See also *Arlington* v. *Board of Conciliation and Arbitration*, 370 Mass. 769, 773-774 (1976) (arbitration provision in statute which provided for wages and benefits for police officers and firefighters valid under Home Rule Amendment since it applies generally to all municipalities in conformity with § 8); *New England LNG Co.* v. *Fall River*, 368 Mass. 259, 267 (1975) (statute vesting authority in Department of Public Utilities to control storage of natural gas takes precedence over local zoning law because statute is of general application in compliance with § 8); *Doris* v. *Police Comm'r of Boston*, 374 Mass. 443, 443-447 (1978) (statutory residency requirement for police officers valid despite local nature of subject because there is no restriction in § 8 on subject matter of statute of general applicability).

[8] General Laws c. 41, § 81A, as amended through St. 1961, c. 276, § 2, provides in part: "Any city except Boston, and, except as hereinafter provided, any town may at any time establish a planning board hereunder. Every town not having any planning board shall, upon attaining a population of ten thousand, so establish a planning board under this sec-

The special legislation in question in the instant case, St. 1973, c. 412, states as its purpose the construction of a new jail in Bristol County. Since Bristol County represents a class of two or more cities and towns, this section complies with § 8. Section 2 of the statute provides that the county commissioners may take by eminent domain or acquire by purchase "any land and buildings that may be necessary for said purposes." This provision is also valid under § 8 since it does not specify the land of any city or town in particular. Thus, the statute satisfies the requirements of § 8 and is valid under the Home Rule Amendment.

In summary, it is instructive to bear in mind that this is neither a "town's rights" case, nor a "county's rights" case, but rather a question of legislative intent. Our reading of The Zoning Act convinces us that the Legislature did not intend by this act to subject essential public buildings of the Commonwealth to municipal zoning regulations. Not only is this conclusion consistent with prior case law but it is also mandated by the language of The Zoning Act itself. Moreover, we are averse to rule that the Legislature can override local zoning only by explicit statutory language lest we cause undue confusion in a host of other situations in which the Legislature did not intend to yield to local regulations but did not specifically refer to them in the statute. Finally, our reading of §§ 6 and 8 of the Home Rule Amendment does not alter our conclusion that the land in Dartmouth on which the county commissioners seek to have a new jail constructed and any structures to be erected thereon are not subject to the municipal zoning by-law of the town of Dartmouth.

Judgment affirmed.

WILKINS, J. (dissenting). The only issue of any substance in this case is whether the local zoning by-law (which, under the Home Rule Amendment, may be regarded as having the force of a statute) is to be treated as overriden by a statute that is silent on the right of the county commissioners to disregard local zoning restrictions. I think the court does a disservice not only to the spirit but also to the provisions of the Home Rule Amendment by relying on pre-Home Rule Amendment decisions to attribute to the Legislature an intention to override local legislation by a statute that is entirely silent on the question. I have no doubt that, under the Home Rule Amendment, the Legislature could properly have authorized the county commissioners to proceed in disregard of local zoning regulations.

Is it as clear as the court's opinion suggests that the Legislature intended by implication to authorize the county commissioners to place the new county jail in any residential neighborhood of their choice in the county? The county commissioners happened to select a site in which the proposed use may not be substantially incompatible with other uses authorized under the town's zoning by-law. However, the principle established by the court's decision is that every grant of the power of eminent domain to a State entity or agency (at least if enacted after the Home Rule Amendment) contains an implied right to disregard explicit, lawful, local restrictions. The inference that the Legislature intended to bar the application of local zoning regulations is not warranted in all the circumstances. Particularly, there has been no showing that the county commissioners cannot achieve their objectives without acting contrary to local zoning regulations. It would be wiser under home rule principles to require the Legislature in cases such as this to be explicit on the subject of overriding local regulations.

COMMONWEALTH *vs.* GORDON O'BRIEN.

Bristol. March 3, 1980. — May 30, 1980.

Present: HENNESSEY, C.J., QUIRICO, BRAUCHER, KAPLAN, & WILKINS, JJ.

Practice, Criminal, Assistance of counsel, Continuance.

A judge did not abuse his discretion in denying a continuance of a criminal trial to permit newly-appointed counsel to prepare a defense where the denial was not based on the judge's misapprehensions of fact, where the defendant had advance warning that the trial would commence on that date, and where the defendant was adequately represented by counsel. [721]

INDICTMENTS found and returned in the Superior Court on March 3, 1971.

The cases were tried before *Leen*, J.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Daniel F. Featherston, Jr., for the defendant.

William A. Schroeder, Assistant District Attorney, for the Commonwealth.

BRAUCHER, J. In 1971 a jury found the defendant guilty of rape, kidnapping, unnatural acts, sodomy, and assault with a dangerous weapon, and he was sentenced to forty to fifty years of imprisonment for rape and to lesser concurrent terms for kidnapping and sodomy. The other charges were placed on file. The defendant appealed pursuant to G. L. c. 278, §§ 33A-33G, and after a long delay he now contends that the judge abused his discretion in denying a continuance to enable counsel to prepare the defense. The Appeals Court affirmed the judgments. *Commonwealth* v. *O'Brien*, 8 Mass. App. Ct. 925 (1979). We granted the defendant's application for further appellate review, and we affirm.

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